

No. 87-499

Supreme Court, U.S.

FILED

FEB 4 1988

**JOSEPH F. SPANIOL, JR.,
CLERK**

IN THE

Supreme Court of the United States

October Term, 1987

CHARLES R. CHRISTIANSON AND
INTERNATIONAL TRADE SERVICES, INC.,
Petitioners,

vs.

COLT INDUSTRIES OPERATING CORP.
RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

JOINT APPENDIX

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1986. JA-106

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enth Circuit dated February 24, 1986. JA-110

Order of the United States Court of Appeals for the
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The following have been omitted in printing this joint
appendix, but appear on the following pages in the appen-
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Federal Circuit Decision, June, 25, 1987 PA-1

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Note: This opinion will not be published in a printed volume because it does not add significantly to the body of law and is not of widespread legal interest. It is a public record. It is not citable as precedent. The decision will appear in tables published periodically.

IN THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

COLT INDUSTRIES OPERATING)	
CORP,)	
FIREARMS DIVISION,)	
<i>Appellee,</i>)	
	)	Appeal No. 84-559
v.)	
)	
SPRINGFIELD ARMORY, INC., and)	
ROCK ISLAND ARMORY, INC.,)	
<i>Appellants.</i>)	

DECIDED: March 20, 1984

Before DAVIS, BALDWIN and MILLER, *Circuit Judges*.
MILLER, *Circuit Judge*.

DECISION

The district court's order for a preliminary injunction against defendants/appellants (hereinafter "Springfield") is *affirmed*.

OPINION

We are persuaded that the district court did not abuse its discretion in granting Colt's motion for a preliminary injunction and that the court did not err in concluding, from the

record before it, that there is a reasonable likelihood of Colt's succeeding substantially on the merits while, at the same time, balancing the comparative injuries to the parties. Wright and Miller, **FEDERAL PRACTICE AND PROCEDURE (CIVIL)** §2948 (1983). We note that the district court's order requires Colt to furnish security in the amount of \$500,000 for payment of such costs and damages as may be incurred or suffered by Springfield in the event it is finally found that the injunction was wrongful.

Although Springfield's 35 U.S.C. §112 arguments, particularly relating to best mode, have an appearance of validity, (*see, White Consolidated Industries, Inc., v. Vega Servo-Control, Inc.*, 713 F. 2d 799, 218 USPQ 961 (Fed. Cir. 1983)), the evidence of record is almost totally lacking in specifics. Springfield points to "admissions" of Colt's witnesses that M-16 specifications were necessary for making the M-16 rifle. However, as we understand it, the numerous Colt patents covered *parts* of the M-16, so that, at most, a best mode of each would be for *use* in the M-16 rifle,—not for the M-16 itself. This would require an analysis, patent by patent, of the specifications (trade secrets) alleged to be essential in practicing each invention and/or meeting the best mode requirement; also a showing of why each individual invention could not be practiced and/or the best mode requirement satisfied in the absence of such specifications; further, whether such specifications were in existence at the time the Colt patent applications were filed. Springfield will have an opportunity, through discovery and otherwise, to present such evidence at trial, along with evidence covering other points raised by this court during oral argument.

We are also satisfied that the district court's preliminary injunction meets the requirements of Fed. R. Civ. P. 65(b).

SELECTED ENTRIES FROM DISTRICT COURT DOCKET SHEETS

84-4056

PLAINTIFFS CHRISTIANSON, Charles R. and INTERNATIONAL TRADE SERVICES, Inc., a Massachusetts corporation	DEFENDANTS COLT INDUSTRIES OPERATION CORP., a Delaware Corporation
--	--

CAUSE

(CITE THE U.S. CIVIL STATUTE UNDER WHICH
THE CASE IS FILED AND WRITE
A BRIEF STATEMENT OF CAUSE)

Antitrust case (Deft. took action to put pltf. out of business by asserting illegal monopoly control over M-16 rifle parts in violation of 15 U.S.C., Sec. 1 & 2)

. . . .

Charles R. Christianson et al vs. Colt Industries Operating Corp, 84-4056

1984

May 14	1	Complaint filed
- * -		
June 6	5	Answer and Counterclaims fld. by Deft. w/ cert. of serv.
- * -		
June 25	7	Reply to Counterclaims fld. by Pltfs w/cert. of serv.
June 26	8	MO for Consolidation with Supporting Authority and Pr. of Serv. fld. by Pltf. (consolidate this case and 83.4072)
June 27	9	Order for Consolidation fld. and entered Ordered that Civil Action No. 84-4056 and Civil Action 83-4072 are consolidated for discovery purposes and trial in accord w/ Rule 42(a) of FRCP. (See Order) (Morgan,J.)

ALL FUTURE PLEADINGS TO BE FILED

IN CASE No. 83-4072

Sept. 5 Consent Judgment filed and entered in Case No. 83-4072. That case is now dismissed. This case, No. 84-4056 is still pending. Final Pre-Tr. Conf. set for Thur. Oct. 11 and Jury Trial set for Wed. Nov. 7, 1984 are still set for those dates.

- * -

Oct. 16 32 MO for an Order restoring this case to the Trial Calendar and Deferring Pltfs MO for Summary Judg. fld. by Deft. w/ exhibits and pr. of serv.

- * -

Oct. 18 39 Pltfs' 1st MO for Leave to Amend Complaint fld.

Oct. 18 40 MO for Summary Judgment fld. by Pltf.

- * -

Oct. 19 44 Case set for Hearing on Pending MOS. on Wed. Oct. 31, 1984 at 10:00 A.M. in R.I. before J. Morgan. Notices and Cal. by clerk. (Morgan,J.)

Oct. 19 45 Order filed and entered - ordered that the mo for leave to amend Complaint is allowed. (See Order)(Copy of Order sent to attys. of record by clerk.) (Morgan,J)

Oct. 19 46 Ct. II of Complaint filed.

- * -

Oct. 24 50 Case re-set for Hearing on Pending Mos. on Wed. Nov. 14, 1984 at 10:00 A.M. in R.I., before J. Morgan. Hearing set for Oct. 31, 1984 Cancelled. Notices and Cal. by clerk. (Morgan, J.)

- * -

Nov. 13 53 Cross-MO for Summ. Judg. fld. by deft. Colt.

- * -

Nov. 14 Parties pres. by/c for hearing on cross motions for summ. judg. Deft. allowed 20 days to answer amended complaint. Atty. Spiro Bereveskos admitted to practice in this court for this case on oral mo. of J. McNett. Argu-

ments of counsel on cr. mo. for summ. judg. Parties granted until Dec. 1, 1984 to submit simultaneous briefs. Matter taken under advisement. (Morgan, J.)

- * -

Dec. 5 60 Answer and Counterclaims to Count II of the Amended Complaint fld. by Deft. w Cert. of Serv.

Dec. 19 61 Deft's Surreply Memo of Law in Support of its Cross MO for Summ. Judg. fld. by Colt w/ cert. of serv.

Dec. 31 62 Pltfs' Memorandum in Response to Deft's Surreply Memorandum Relating to Mos. for Summ. Judg. fld. by Pltf. w/ cert. of serv.

- * -

1985

- * -

May 24 63 Memorandum Decision and Order filed - ordered that Pltfs mo for summ. judg. is allowed as to liability on Cts. 1 & 2 of the Complaint, and Deft's mo. for summ. judg. is denied. Further ordered that Pltfs shall submit w/in 30 days proposed final judgment order on liability & deft. may file any comments as to form w/in 10 days after service. (See Memo. Dec. & Order)
(Copies sent to attys. of record by the Court)
(Morgan, J.)

- * -

July 5 66 Deft's MO for a Stay Pending Appeal fld. by Deft. w/ cert. serv.

July 5 67 Aff. of Ronald E. Stilwell, fld. w/ cert. serv.

July 5 69 Case set for Hrg. on Form of Judgment on Friday, July 10, 1985 at 10:00 A.M. in Peoria. Clerk sent notices (Morgan, S.)

July 19 Parties pres. in o/c for hearing on form of Final Judgment on Liability.

70 Proposed Revised Final Judgment on Liability fld. by Pltfs.

- 71 Hearing begun and concluded. Final Judgment on Liability filed and entered.
- 72 (See Same) Order for a Stay Pending Appeal filed and entered. (See Same) (Cc of both sent to attys. of record by the Court. Defts. Exhibits 1 & 2 for security on appeal marked and placed in file at the direction of the Court)
- 73 Judgment in a Civil Case filed and entered. (See Same) (copies to attys. by c)
- July 31 74 NOTICE OF APPEAL fld. by Deft. Colt Ind. w/ cert. of serv.
- * -
- 1986
- * -
- Feb. 3 76 Mandate from U.S. Ct. Appeals for Fed. Cir., fld. Appeal transferred to U.S.C.A. 7Circuit (See Same)
- * -
- Aug. 27 80 Mandate fld. by U.S.C.A. 7th Circuit. Ordered that cause is transferred to the Federal Circuit pur. to 28 U.S.C. Sec. 1631. Each party to bear its own costs in this court. (See Same)
- * -
- 1987
- * -
- July 30 81 Mandate fld. by U.S. Ct. Appeals for the Fed. Circuit. Ordered and adjudged: Reversed in Part, Vacated in Part, and Remanded (See same)
- * -

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

	FILED
	May 14 1984
CHARLES R. CHRISTIANSON and	) Robert J. Kauffman,
INTERNATIONAL TRADE	) Clerk
SERVICES, INC., a Massachusetts	) U.S. District Court
corporation,	) Central District of
	) Illinois
<i>Plaintiffs,</i>)
	) Civil Action
v.	) No. 84-4056
)
COLT INDUSTRIES OPERATING)
CORP., a Delaware corporation,)
)
<i>Defendant.</i>)

COMPLAINT

1. This Complaint is instituted against the above-named defendant pursuant to Section 4 of the Clayton Act (15 U.S.C. §15) and Section 16 of the Clayton Act (15 U.S.C. §26) for damages, injunctive and equitable relief by reason of its violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1 & 2), as hereinafter alleged.

2. Defendant (hereafter "Colt") is a Delaware corporation with its principal place of business located in the State of New York.

3. Plaintiff, Charles R. Christianson (hereafter "Christianson"), is a Massachusetts resident and citizen, and International Trade Services, Inc., (hereafter "ITS") is a Massachusetts corporation with its principal place of business in Massachusetts.

4. Colt is licensed to do business in the State of Illinois and has a registered office in Illinois.

5. The claims of plaintiff in this lawsuit, in part, arise out of transactions occurring in Illinois and in this federal judicial district and division.

6. Colt has previously sued plaintiffs in this judicial district and division, and has argued successfully in response to a Motion to Dismiss by plaintiffs that the matters out of which the claims hereafter asserted arise, occurred, in part, in this federal judicial district and in the State of Illinois.

7. Said suit by Colt against plaintiffs, known as Civil Action No. 83-4072, was voluntarily dismissed by Colt on May 11, 1984, but Colt continues to litigate in this judicial district and division against the co-defendants in said lawsuit; Colt claims in said lawsuit that the matters asserted against Christianson and ITS that were dismissed arose out of the same transactions and were related to the Colt claims against the co-defendants in said lawsuit.

8. Venue in this district and division arises pursuant to 15 U.S.C. §15 and 28 U.S.C. §1391(b) & (c).

9. Defendant ITS has been in the business of selling automatic and semi-automatic rifles, among other items.

10. Charles Christianson is the President of ITS and has been the chief operating officer of said company.

11. Additionally, Christianson's main occupation for the last 16 years has involved matters relating to automatic and semi-automatic rifles.

12. Colt controls nearly 100% of the domestic and foreign manufacture, marketing and sale of 5.56mm. automatic assault and semi-automatic rifles which fall within the designation of M-16, and Colt controls the domestic and foreign market for the manufacture, marketing and sale of M-16 parts and accessories.

13. M-16's and M-16 parts and accessories are manufactured, marketed and sold in the United States and throughout the world by Colt, Colt licensees, the co-defendants in the

aforesaid lawsuit, 83-4072, others who do not have Colt licenses, and until recently, by ITS.

14. During the late 1950's and early 1960's, Colt acquired certain rights to inventions and patents to a 5.56mm. automatic rifle, which rifle was sold to the United States government. The United States government designated the class of such rifle as "M-16."

15. Colt has licensed the United States government and certain others with respect to said patents, but said licenses have extended beyond the expiration time of the patents, most of which have now expired.

16. The term "M-16" has never been a Colt trademark or trade name.

17. As of 1980, the basic patents with respect to the Colt rifle within the M-16 designation and many of the Colt improvement patents on such rifle within the M-16 designation had expired.

18. The validity of the Colt patents had been assumed throughout the life of the Colt patents through 1980. Unless such patents were invalid through the wrongful retention of proprietary information in contravention of United States Patent Law (35 U.S.C. §112), in 1980, when such patents expired, anyone "who has ordinary skill in the rifle-making art" is able to use the technology of such expired patents for which Colt earlier had a monopoly position for 17 years.

19. ITS and anyone else has the right to manufacture, contract for the manufacture, supply, market and sell the M-16 and M-16 parts and accessories thereof at the present time.

20. In 1976, prior to the expiration of said patents, ITS expended funds to have manufactured certain tooling to be used for the manufacture of M-16 parts and accessories, which tooling was made by Casting Engineers, Inc. of Illinois and Martin-Marietta Company.

21. Colt gave ITS permission to use the tooling for which it

had expended funds in 1976 to the end that the suppliers, including Casting Engineers, could make M-16 parts for ITS to sell to customers, including the co-defendants in the aforesaid civil action 83-4072.

22. Contrary to the permission extended to ITS to sell Colt parts and accessories and in violation of the anti-trust laws of the United States previously cited (the Sherman Act), Colt has embarked upon a course of conduct to illegally extend its monopoly position with respect to the described patents and to prevent ITS from engaging in any business with respect to parts and accessories of the M-16, which conduct includes, without limitation, the following:

(a) Forwarded correspondence to customers and potential customers of ITS, urging them not to do business with Christianson or ITS, claiming that to do so would involve them in illegalities;

(b) Forwarded copies of inapplicable court orders to customers and potential customers of Christianson and ITS with accompanying correspondence suggesting that these court orders prohibited those customers from doing business with Christianson and ITS or that the customers would become involved in illegal conduct by doing business with ITS or Christianson;

(c) Sent additional correspondence to customers and potential customers of ITS asserting illegally its claimed rights over M-16 drawings, specifications and parts and accessories to the M-16, and falsely stating that "Colt's right" to proprietary data had been "consistently upheld in various courts";

(d) Filed a lawsuit against Christianson and ITS in this court seeking permanent and preliminary injunctive relief and damages in order to contravene the permission previously given and to illegally extend its monopoly position, all of which has harassed and cost Christianson and ITS substantial sums in defending said matter;

(e) Pursued said lawsuit in this district in bad faith by subjecting plaintiffs to substantial expense in extended

discovery procedures prior to a hearing on a preliminary injunction motion, and after the motion was denied, voluntarily dismissed said lawsuit;

(f) Used the existence of said lawsuit as a basis in the aforescribed correspondence to urge customers and potential customers of ITS and Christianson to refrain from doing business with them, and after their objective of deterring customers from doing such business had been accomplished, thereafter voluntarily dismissed said lawsuit;

(g) Otherwise engaged in conduct designed to injure ITS and its business and to prevent Christianson from making a living in his chosen profession.

23. Notwithstanding the unlawful nature of all of the foregoing efforts and demands by Colt, virtually all suppliers of ITS and customers of ITS have agreed with Colt to refrain from supplying and purchasing M-16 parts and accessories to or from ITS, which has had the effect of requiring ITS to close its doors and no longer transact business.

24. Additionally, the aforementioned acts and conduct of Colt have severely lessened competition in the domestic and foreign marketplaces and assured Colt of the maintenance of its unlawful monopoly of the manufacture, marketing and sale of M-16's and M-16 parts and accessories.

25. Accordingly, Charles R. Christianson and ITS have been seriously impaired, injured and damaged and the interstate and foreign trade and commerce has been severely restrained and monopolized by Colt.

26. By reason of and as a proximate result of the aforescribed unlawful conduct by Colt, ITS has suffered damages which include loss of past, present and future sales and profits and loss of past, present and future good will; Christianson has been deprived of earning salaries and other income from ITS and has otherwise been deprived of making a living with respect to his chosen profession as a result of the illegal conduct of Colt.

27. ITS and Christianson have been damaged in an amount not presently ascertainable, but in excess of \$9,000,000.00.

WHEREFORE, plaintiffs pray for the following:

- (1) That they be awarded trouble damages in the approximate amount of \$27,000,000.00;
- (2) That they be awarded reasonable attorney's fees for the prosecution of this action;
- (3) That a permanent injunction issue restraining Colt from attempting to illegally extend its monopoly position as previously described in the future; and
- (4) That the court award such other and further relief as may be deemed just and proper.

CHARLES R. CHRISTIANSON and
INTERNATIONAL TRADE SERVICES,
INC., Defendants.

By: /s/ Stuart R. Lefstein

For:
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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

CHARLES R. CHRISTIANSON and)	
INTERNATIONAL TRADE)	
SERVICES INC., a Massachusetts)	
corporation,)	
)	
<i>Plaintiffs,</i>)	
	)	Civil Action
v.	)	No. 84-4056
)	
COLT INDUSTRIES OPERATING)	
CORP, A Delaware)	
corporation,)	
)	
<i>Defendant.</i>)	

ANSWER AND COUNTERCLAIMS

Defendant Colt Industries Operating Corp, ("Colt"), by its attorneys Bozeman, Neighbour, Patton & Noe, Parker Auspitz Neesemann & Delehanty, P.C., and Willian Brinks Olds Hofen Gilson & Lione Ltd., for its answer to the correspondingly numbers paragraphs of the complaint of plaintiffs Charles R. Christianson ("Christianson") and International Trade Services, Inc. ("ITS"), avers:

1. Admits that plaintiffs purport to bring their complaint under the statutes cited in paragraph 1, and otherwise denies the allegations therein.
2. Admits the allegations of paragraph 2.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.
4. Admits the allegations of paragraph 4, except denies that Colt maintains an office in Illinois.
5. Denies knowledge or information sufficient to form a

belief as to the truth of the allegations of paragraph 5.

6. Denies the allegations of paragraph 6, except admits that Colt sued Christianson and ITS in this District and Division, that Christianson and ITS moved to dismiss the complaint for lack of jurisdiction, and that their motion was denied; and refers to Colt's papers in opposition to the motion to dismiss for Colt's arguments.

7. Denies the allegations of paragraph 7, except admits that Colt voluntarily dismissed its lawsuit against Christianson and ITS on May 11, 1984, and that Colt continues to litigate against the remaining defendants in that lawsuit; and refers to the amended complaint in that lawsuit for Colt's claims.

8. Denies the allegations of paragraph 8, except admits that plaintiffs purport to base venue on the statutes cited therein.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9.

10. Admits, on information and belief, the allegations of paragraph 10.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, except admits that during the period June 1970 through June 1975, when Christianson was an employee of Colt, Christianson's duties were mainly related to the "M16" rifle.

12. Denies the allegations of paragraph 12, except avers that Colt has the exclusive rights to use of the designation "M16" and its derivatives, such as "M16A1" and "M16A2," in connection with the sale of rifles and their components; and avers that Colt owns or enjoys rights under the inventions, patents, technical data, and other proprietary information necessary to produce and sell 5.56 mm automatic rifles that are designated and have become known as "M16," "M16A1," and "M16A2" rifles.

13. Denies the allegations of paragraph 13, except admits

that "M16" rifles and parts have been manufactured, marketed, and sold by Colt and its licensees in the United States, to the United States government, and to those military procurement agencies of foreign governments deemed friendly by the State Department.

14. Denies the allegations of paragraph 14, except admits that during the late 1950s and early 1960s Colt acquired certain rights to inventions, patents, and other proprietary information, and further developed and designed, a 5.56 mm. automatic rifle that became known as the "AR-15," the "M16," the "M16A1," and the "M16A2" automatic rifles; that the rifle has been sold to the armed forces of the United States; and that when Colt's rifle was adopted by the United States Army as its standard rifle it was given the designation "M16."

15. Denies the allegations of paragraph 15, except refers to Colt's license agreements with respect to the patents and technical data used in "M16" rifles for their terms.

16. Denies the allegations of paragraph 16.

17. Denies the allegations of paragraph 17, except admits that Colt owns patents relating to its "M16" rifle, some of which have expired and some of which have not expired.

18. Denies the allegations of paragraph 18, except admits that Colt's patents are valid until the end of each of their respective lifetimes, and admits that anyone with ordinary skill in the art is entitled to and is able to use any and all of Colt's expired patents for any legitimate purpose.

19. Denies the allegations of paragraph 19.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20.

21. Denies the allegations of paragraph 21.

22. Denies the allegations of paragraph 22, except admits that Colt has sent correspondence to various entities informing them of Colt's rights and their obligations, and refers to that correspondence for the contents thereof; and further admits

that Colt filed a lawsuit against Christianson and ITS in this District and then voluntarily dismissed that lawsuit before those defendants had served an answer.

- 23. Denies the allegations of paragraph 23.
- 24. Denies the allegations of paragraph 24.
- 25. Denies the allegations of paragraph 25.
- 26. Denies the allegations of paragraph 26.
- 27. Denies the allegations of paragraph 27.

FIRST AFFIRMATIVE DEFENSE

- 28. The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

- 29. Plaintiffs lack standing to assert all or some of the antitrust violations in the complaint.

THIRD AFFIRMATIVE DEFENSE

- 30. Any contracts, contractual relations, and prospective economic relationships between ITS and its customers or suppliers alleged in the complaint violated Christianson's own contractual and fiduciary obligations to Colt, or otherwise were illegal, and are therefore void and unenforceable.

FOURTH AFFIRMATIVE DEFENSE

- 31. The complaint incorrectly defines the relevant market.

FIFTH AFFIRMATIVE DEFENSE

- 32. Plaintiffs are barred from any equitable relief by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

- 33. ITS and Christianson fraudulently obtained the "per-

mission" allegedly given them, as alleged in paragraphs 21 and 22 of the complaint, to use certain tooling and to sell Colt parts and accessories. Christianson and ITS made certain misrepresentations set forth in a letter from Paul G. Gubbins dated March 11, 1976, which representations Christianson and ITS knew to be false at the time they were made. Colt relied on these misrepresentations to its detriment by agreeing not to object to ITS fulfilling its pre-existing binding contracts with Martin Marietta and Casting Engineers Inc. to purchase certain castings and forgings and resell them to Colt's Philippine licensee.

- 34. Colt never gave ITS or Christianson permission, after March of 1976, to make any other use of Colt's proprietary information, or to purchase or sell any other "M16" rifle parts and accessories.

SEVENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIMS

Parties and Jurisdiction

- 35. Colt is a Delaware corporation with its principal place of business at 430 Park Avenue, New York, New York.

- 36. Upon information and belief, ITS is a Massachusetts corporation with its principal place of business at P. O. Box 66, Springfield, Massachusetts.

- 37. Upon information and belief, Christianson is a citizen of the State of Massachusetts and is the president and majority shareholder of ITS. Christianson is also a former employee of Colt.

- 38. This Court has jurisdiction over Colt's counterclaims pursuant to 28 U.S.C. §1331, §1338, §1332(a), 15 U.S.C. §1121, Fed. R. Civ. P. 13, and the doctrines of pendent and ancillary jurisdiction. The amount in controversy exceeds \$10,000, exclusive of interest and costs. Venue is proper in this district pursuant to 28 U.S.C. §1391.

Colt's Rights in the "M16" and "AR-15" Rifles

39. Colt is in the business, *inter alia*, of production and sale of firearms. During the late 1950s and early 1960s Colt acquired certain rights to inventions, patents, and other proprietary information, and further developed and designed, a 5.56 mm. automatic rifle that became known as the "AR-15," the "M16," and the M16A1" automatic rifles.

40. "AR-15" is the original name of the rifle and is still used by Colt to describe the semi-automatic sport or non-military version of the rifle. The names "AR-15" and "Colt AR-15" were registered as trademarks belonging to Colt in the Principal Register of the United States Patent Office on March 14, and April 18, 1967, respectively, and were assigned Registration Nos. 825,581 and 827,453, respectively.

41. The designation "M16" was originally given to Colt's rifle in 1966 by the United States Defense Department when the rifle was adopted as the Army's standard rifle. "M16A1" and "M16A2" are model variations reflecting product improvements in the original "M16," and the term "M16" will be used hereinafter to refer to all models.

42. Colts has devoted substantial time, effort, and money to promoting its trademarks and protecting them from infringement, and Colt has manufactured and sold the rifle known as the "M16" automatic rifle since at least 1966. The trademarks "M16" and "AR-15" have become distinctive and widely recognized names by which Colt's 5.56 mm. rifle has become known to the weapons industry, the military procurement agencies of foreign governments, and other purchasers; and the trademarks are inextricably associated with Colt.

43. By reason of the foregoing, Colt has the exclusive rights to the use of "AR-15" and "M16" in connection with rifles and their components.

44. Colt owns or controls the necessary inventions, patents, technical data, manufacturing and process data, know-how, and proprietary rights in connection with its rifle know as

the "M16." Colt has expended substantial time, effort, and money to safeguard its proprietary rights in this information.

45. Colt has developed detailed product drawings of all the components of the "M16" rifle. These drawings contain the dimensions, tolerances, material specifications and other information necessary to manufacture each part. Colt maintains these drawings as trade secrets, and takes measures to protect against disclosure to unauthorized persons. Such measures include placing a proprietary legend on the drawings, and requiring employees such as Christianson to sign agreements respecting those trade secrets, including the drawings.

46. Colt has licensed the United States Government, Department of the Army, to manufacture "M16" rifles and spare parts and accessories, and, with certain restrictions, to sell "M16" rifles, parts, and accessories. The United States Government is contractually obligated to protect Colt's proprietary rights in its technical data, drawings, and other proprietary information needed to manufacture the "M16" rifle. Colt has also licensed four foreign governments (the Philippines, Korea, Singapore and Canada), under similar contractual restrictions and obligations, to manufacture "M16" rifles, but only for each nation's own military use and not for sale to others. All of these foreign licenses, except for Colt's recent license agreement with Canada, have been terminated or have expired.

47. Each of Colt's licensees and former licensees has a continuing contractual obligation not to use outside of the license or to disclose Colt's technical and proprietary information, and to use and respect Colt's proprietary stamps on its drawings. Christianson has been aware, since the time of his employment with Colt, that Colt's licensees and former licensees have contractual obligations to Colt, including obligations to protect Colt's trade secrets including Colt's proprietary drawings.

48. Colt and the United States Government have sub-contracted with certain parts and accessories suppliers for the

manufacture of some of the partes and accessories for the "M16" rifle. These suppliers are contractually obligated to treat as confidential and proprietary Colt proprietary information to which they have been given access for this limited purpose and to use any specifications, drawings, tools, jigs, dies, fixtures, materials, and other items supplied or purchased by Colt or the United States Government only in performing work under contract with Colt or the United States Government. Christianson has been aware, since the time of his employment with Colt, that Colt's and U.S. government suppliers have contractual obligations to Colt and/or to the United States Government, including obligations to protect Colt's trade secrets including Colt's proprietary drawings.

Christianson's Obligations as a Colt Employee

49. Christianson was employed by Colt from June 1, 1970, through June 30, 1975. He held positions including tool designer, project specialist, project administrator, and supervisor of project planning. Christianson had significant responsibilities in Colt's programs for licensing the manufacture of "M16" rifles to the governments of Singapore, the Philippines, and Korea. In these positions of trust, Christianson was given access to Colt's proprietary technical data for the "M16" rifle, including drawings and process and manufacturing specifications. Christianson was aware that Singapore, the Philippines and Korea obtained the drawings and other technical data utilized to manufacture "M16" rifles through their licenses with Colt.

50. Prior to and as a condition of being employed by Colt, Christianson signed an agreement not to disclose, either during or after his employment, without the written consent of an executive officer of Colt, any confidential information obtained in Colt's employ. (A copy of the "Employee Invention & Confidential Information Agreement" signed by Christianson is annexed hereto as Exhibit A.) Colt gave Christianson written notice, which he acknowledged receiving, reading and understanding, that "[t]he confidential information made available to an employee in the course of his employment with Colt Indus-

tries is the property of the company and may not be disclosed to unauthorized individuals." (A copy of this policy and procedure statement, acknowledged by Christianson, is annexed hereto as Exhibit B). Upon resigning from Colt, Christianson certified that he had had access to Colt's proprietary trade secrets and confidential information and that he had accounted for and returned all such material. (A copy of Christianson's "Termination Certification" is annexed hereto as Exhibit C.)

51. During his employment with Colt, Christianson had notice and knowledge that Colt placed restrictive legends on Colt's product drawings for "M16" rifle parts. Christianson was also aware, on information and belief, that Colt's licensees or former licensees, and present or former suppliers to Colt or the United States Government, were contractually obligated not to sell "M16" rifles, parts, or accessories to anyone other than Colt or the United States Government by the misuse or disclosure of Colt's proprietary technical information or the use of Colt property.

Christianson's Breach of His Obligations to Colt, Tortious Interference with Colt's Contracts, Misappropriation of Colt's Property, and False Representations about ITS Products.

52. Upon information and belief, Christianson deliberately retained, or obtained from sources he knew to be under an obligation to keep such information confidential, Colt's proprietary drawings and other trade secrets pertaining to the "M16" rifle. Christianson has used this information for his personal benefit and that of ITS.

53. ITS and Christianson have contacted and negotiated with Colt's suppliers and former licensees, as well as the United States Government's suppliers, in a concerted effort to induce the suppliers and licensees to breach their contractual and other obligations to or for the benefit of Colt. Upon information and belief, one or more such entities have breached their obligations to or for the benefit of Colt as a result of ITS's and Christianson's actions.

54. Within a month after leaving Colt's employ, Christianson had in his possession a number of product drawings for "M16" rifle parts, which were designated as Philippine drawings and clearly identified as being proprietary to Colt. Christianson and ITS entered into a contract with Colt's Philippine licensee to supply it with "M16" forgings and castings.

55. In or about late 1975 and early 1976, Christianson, through ITS, approached Casting Engineers and Martin Marietta, knowing that both these companies were Colt suppliers, for the purpose of ordering "M16" rifle castings and forgings for resale to Colt's Philippine licensee.

56. Relying on Christianson's misrepresentations as set forth in paragraph 33 above, Colt advised ITS in March 1976 that Colt would not object if ITS fulfilled its existing, binding contracts with Casting Engineers and Martin Marietta to purchase parts for resale to Colt's Philippine licensee. Colt further advised Christianson and ITS that Colt did not waive any rights -- proprietary, contractual or otherwise -- Colt might have as to any future situations of this kind.

57. Christianson and ITS never sought, and Colt never gave permission, after March 1976, for ITS or Christianson to enter into any new contracts to use Colt's "M16" technical data to make, purchase or sell "M16" parts. Nevertheless, ITS proceeded, without requesting or obtaining permission from Colt, to enter into new contracts to supply "M16" rifle parts, not only to the Philippine government, but also to the government of Singapore and to others.

58. In connection with ITS's contracts with Colt's Singapore licensee, ITS obtained drawings of "M16" rifle parts identified with a "CT" prefix. Christianson recognized these Singapore drawings to be the same or substantially similar to Colt drawings of the same parts. ITS used these drawings, and also used Colt drawings previously obtained from the Philippine government and Colt drawings already in the possession of Colt suppliers, to purchase and sell "M16" parts to various customers.

59. In or about 1980, ITS, through its Tool Supply Division, began to sell to customers in the United States its excess inventory of "M16" rifle parts which it had obtained through the use of Colt's own or Colt's Philippine or Colt's Singapore drawings. In its promotional literature, ITS described the "M16" parts being offered for sale as, *inter alia*, "manufactured in accordance with U.S. Military Specifications."

60. ITS has continued to sell these "M16" rifle parts to customers in the United States until its entire inventory was liquidated in early 1984. Even after Colt commenced a lawsuit against Christianson and ITS in October of 1983, ITS and Christianson continued to dispose of this inventory. Since October 1983, ITS has sold approximately \$50,000 worth of "M16" rifle parts obtained through the misuse of Colt's proprietary information.

FIRST COUNTERCLAIM

61. Colt repeats and realleges paragraphs 35 through 60 above.

62. By reason of the foregoing, Christianson has, for his own personal benefit and on behalf of the company he controls, ITS, breached his contractual and other duties to Colt.

63. The actions of Christianson and ITS have caused irreparable harm to Colt, and will continue unless enjoined.

64. Colt has no adequate remedy at law.

SECOND COUNTERCLAIM

65. Colt repeats and realleges paragraphs 35 through 60 and paragraph 62 above.

66. As a result of the foregoing, Colt has been damaged in the amount of \$3 million.

THIRD COUNTERCLAIM

67. Colt repeats and realleges paragraphs 35 through 60 above.

68. Plaintiffs have converted and misappropriated to their own use the name, skill, effort, expenditures, reputation, and distinctive descriptions and indicia associated with the rifles, parts and accessories manufactured by Colt; and plaintiffs have passed off their business and products as authorized or sponsored by Colt, and have wrongfully associated their business with Colt's.

69. Plaintiffs have thereby been unjustly enriched, and Colt has been deprived of the value of the business it has created and developed.

70. By reason of the foregoing, plaintiffs have engaged in statutory and common law unfair competition, misappropriation, and conversion of Colt's property, and will continue to do so unless enjoined.

71. Colt has no adequate remedy at law.

FOURTH COUNTERCLAIM

72. Colt repeats and realleges paragraphs 35 through 60, and 68 through 70, above.

73. By reason of plaintiffs' conversion, misappropriation, and unfair competition, Colt has been damaged in the amount of \$3 million.

74. Plaintiffs' conduct in converting and misappropriating Colt's property was fraudulent, willful, and in wanton disregard of Colt's rights.

FIFTH COUNTERCLAIM

75. Colt repeats and realleges paragraphs 35 through 60 above.

76. By reason of the foregoing, plaintiffs have tortiously interfered with contractual and other obligations owed Colt by its former licensees and its and the United States Government's suppliers, and will continue to do so unless enjoined.

77. Colt has no adequate remedy at law.

SIXTH COUNTERCLAIM

78. Colt repeats and realleges paragraphs 35 through 60 and 76 above.

79. By reason of plaintiffs' intentional inducement of third parties to breach their contractual obligations to Colt, Colt has been damaged in the amount of \$3 million.

80. Plaintiffs' conduct in tortiously interfering with contractual obligations to Colt was fraudulent, willful, and in wanton disregard of Colt's rights.

SEVENTH COUNTERCLAIM

81. Colt repeats and realleges the allegations in paragraphs 35 through 60 above.

82. The use by Christianson and ITS of the designation "M16" and of "M16" part numbers; and plaintiffs' use, on information and belief, of other words, designations, representations, and descriptions, including the description that ITS "M16" parts are manufactured in accordance with U.S. military specifications, constitute deliberate and willful false descriptions, representations, and designations of origin of goods entered into commerce by ITS and infringement of Colt's registered and common law trademarks which are likely to cause confusion and mistake, all in violation of § 43(a) of the Lanham Trademark Act of 1946, as amended, 15 U.S.C. § 1125(a).

83. Plaintiffs' acts were deliberate and willful and have caused and will continue to cause irreparable injury to defendant, unless enjoined by this Court.

84. Colt has no adequate remedy at law.

EIGHTH COUNTERCLAIM

85. Colt repeats and realleges paragraphs 35 through 60 and paragraphs 82 and 83 above.

86. Colt has been damaged by plaintiffs' violation of § 43(a)

of the Lanham Trademark Act, 15 U.S.C. § 1125(a), in the amount of \$3 million.

NINTH COUNTERCLAIM

87. Colt repeats and realleges paragraphs 35 through 60 and 82 above.

88. By reason of the foregoing, plaintiffs have willfully and deliberately engaged in deceptive trade practices in violation of Ill. Rev. Stat. ch. 121 1/2 § 312, and will continue to do so unless enjoined.

89. Colt has no adequate remedy at law.

TENTH COUNTERCLAIM

90. Colt repeats and realleges paragraphs 35 through 60 and 82 above.

91. By reason of the foregoing, plaintiffs have created a likelihood of injury to Colt's business and of dilution of the distinctive quality of its registered mark "AR-15" and its common-law mark "M16," in violation of Ill. Rev. Stat. ch. 140 § 22.

92. Colt has no adequate remedy at law.

ELEVENTH COUNTERCLAIM

93. Colt repeats and realleges paragraphs 35 through 60 and paragraph 82 above.

94. By reason of the foregoing, Colt has been damaged in the amount of \$3 million.

WHEREFORE, Colt demands judgment against plaintiffs dismissing the complaint and:

1. Permanently enjoining defendants, their officers, agents, servants, employees, attorneys, and all others in active concert or participation with them, from

(a) using or disclosing any of Colt's proprietary information;

(b) representing that ITS's "M16" rifle parts are equivalent to Colt's "M16" rifle parts or that the parts are interchangeable with those of plaintiffs' "M16" rifles, or that the parts meet U.S. Military specifications;

(c) using, without written Colt authorization, any Colt, U.S. Government, Philippine, Singapore, or Korean drawing for "M16" parts, or any information obtained or derived from any such drawings;

(d) soliciting or ordering from Colt's current or former suppliers or licensees or from the Government's suppliers, any "M16" parts, the manufacture of which would use Colt's proprietary information or other property;

(e) selling "M16" parts obtained or known to have been procured from Colt's current or former suppliers or licensees or from the Government's suppliers through the misuse of Colt's proprietary information; and

(f) committing acts of false designation of origin, authorization, or sponsorship, or of false description through the affixing, applying, annexing, or making of any other use of the names and designations "Colt," "M16," "M-16," "M16A1," "AR-15," or "XM-15" and/or any other acts which tend falsely to describe or represent weapons or parts being sold or offered for sale by Christiansen or ITS.

2. Directing plaintiffs to destroy any and all "M16," "M16A1," "AR-15" or "XM-15" rifles, parts and accessories, and replicas thereof; all drawings, copies of drawings, or documents containing information obtained or derived from drawings under plaintiffs' care, custody, or control for any rifle or parts thereof designated "XM-15" or "M16," including all "M16" drawings obtained from the Philippines or Singapore;

3. Awarding Colt damages in the amount of \$3 million; and, with respect to Colt's fourth and eighth claims, awarding Colt damages of up to three times the amount of actual damages.

4. Ordering Christiansen to account for all profits made by plaintiffs from the sale of "M16" rifle parts through the use of Colt's proprietary information and for all profits made from the

sale of such rifle parts through false designations of origin and false description;

5. Awarding Colt the costs, including attorneys' fees, of this action, pursuant to 15 U.S.C. § 1117, and Ill. Rev. Stat. Ch. 121 1/2 §313; and

6. For such other and further relief as the Court deems just and proper.

COLT INDUSTRIES OPERATING
CORP,
DEFENDANT

By: /S/ Anthony M. Radice
for PARKER AUSPITZ
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& DELEHANTY P.C.
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COLT INDUSTRIES POLICY AND PROCEDURES

Subject: Conflict of Interest Number: 52.0
Page: 1 of 2
Date: April 5, 1965

Approved by:
/S/ A. C. Hilton

POLICY

Employees may not engage in activities or maintain ties involving conflict with their responsibilities to Colt Industries. Such unacceptable activities, interests, or connections include those which may diminish or endanger the energy or objectivity with which the employee discharges his duties at Colt Industries as well as those which may give rise to adverse publicity or result in a legal liability.

APPLICATION

1. No employee may accept a substantial gift or favor from a customer or supplier of Colt Industries or from any one or any firm with whom the employee is dealing on behalf of Colt Industries.
2. No employee and no member of his immediate family may have any financial interest whether as a stockholder (or other owner) or creditor in a non-publicly owned enterprise if a substantial part of the business of that enterprise consists of acting as a supplier, competitor, or customer of Colt Industries.
3. No employee and no member of his immediate family may have any financial interest whether as a stockholder (or other owner) or creditor in any non-publicly owned enterprise *with which the employee deals*, either directly or indirectly, on behalf of Colt Industries, *whether or not the volume of business transacted with such enterprise is substantial*.
4. No employee may be also employed by, or serve as an officer, director or consultant of, any enterprise which is a

competitor, customer or supplier of Colt Industries or with which he deals on behalf of Colt Industries.

5. No employee may become engaged in any outside activity for which he receives remuneration until he has disclosed the situation in writing to his supervisor or to the personnel officer or general manager of the organization of which he is an employee. Management will evaluate the activity in light of the policy expressed herein and register approval or objection. All information thus disclosed by the employee shall be treated as most private.
6. The confidential information made available to an employee in the course of his employment with Colt Industries is the property of the company and may not be***

COLT INDUSTRIES POLICY AND PROCEDURES

Subject: Conflict of Interest
(Initialed by ACH)

Number: 52.0
Page: 2 of 2
Date: April 5, 1965

PROCEDURES

7. An employee who believes that he may be acting contrary to this policy should promptly disclose the situation to his supervisor or to the personnel officer or general manager of the organization of which he is an employee.
8. It is the supervisor's responsibility to refer any information concerning situations covered by this policy to the personnel officer or general manager of the organization of which he is an employee.
9. Local personnel officers or general managers will, as appropriate, seek the advice of the Vice President Administration, or the Vice President-General Counsel of Colt Industries.

DEFINITIONS

10. The term "Colt Industries" includes Colt Industries Inc. and all of its subsidiaries, divisions, operations and other units.
11. "Employee" includes officers and all executive, administrative, professional, supervisory, technical or clerical personnel; all personnel responsible for the approval, issuance, or allocation of orders, contracts, commitments, or specifications or responsible for the determination of prices or the terms of purchase or sale of materials, products, or services; all personnel who deal with or handle such material. For the purposes of all paragraphs except 2, "employee" includes *all* personnel of Colt Industries.
12. "Substantial customer" does not include any enterprise whose purchases from Colt Industries are not significant in proportion to the total business of the enterprise.
13. "Supplier of Colt Industries" includes any organization representing a supplier in its dealings with Colt Industries and any enterprise furnishing a substantial component or service for the product or service furnished by a supplier of Colt Industries.
14. "Immediate family" includes (a) the parents, the wife and all children of the employee, and (b) other members of an employee's family (or his wife's) who live in the same household as the employee.
15. "Non-publicly owned enterprise" means any enterprise except one whose shares are listed or traded on a regulated securities exchange or are traded over-the-counter and are regularly reported publicly.

1/5/66

Dr. Andrew C. Hilton
Vice President Administration
Corporate Headquarters
New York

Dear Dr. Hilton:

I hereby acknowledge receiving, reading and understanding Colt Industries Inc. Policy No. 52.0, "Conflict-of-Interest", dated April 5, 1965.

Very truly yours,

/S/ Charles R. Christianson
(Signature)

/S/ Tool Designer (Title)

/S/ Colt Firearms (Organization)

Date: /S/ May 26, 1970

EMPLOYEE INVENTION & CONFIDENTIAL INFORMATION AGREEMENT

In consideration of my employment by COLT'S PATENT FIRE ARMS MFG. CO., INC., of Hartford, Connecticut, (hereinafter referred to as "Colt's") and the salary or wages to be paid to me, I hereby agree as follows:

1. The term "inventions" as used in this agreement means and includes any and all inventions, improvements, secret processes and discoveries, whether or not patentable, relating or pertaining to the business of Colt's, made or conceived by me during the period of my employment by Colt's, regardless of whether made or conceived by me (a) alone or jointly with others, (b) during or outside of working hours, and/or (c) utilizing Colt's premises, tools or materials, or otherwise.

2. I agree that my entire right, title, or interest, both domestic or foreign, in any and all inventions (as defined above) shall belong to Colt's, and I will and do hereby assign and convey to Colt's, its successors and assigns, any and all said inventions.

3. I agree that I will promptly disclose to Colt's, its successors and assigns, and to no other persons, any and all inventions (as defined above) and that when required, I will sign any and all papers which in the opinion of officials of Colt's shall be deemed necessary to protect any of said inventions by Letters Patent and any and all further papers as may be necessary, in the opinion of such officials to vest in Colt's the entire right, title, and interest in said inventions in the United States and all foreign countries.

4. I further agree that during and after my employment by Colt's, I will not disclose to any third person any confidential information obtained by me while in the employ of Colt's, unless such disclosure is consented to in writing by an executive officer of Colt's; and I further agree that upon leaving the employ of Colt's, I shall deliver to Colt's any model, drawing, reproduction or other document or property of Colt's which may be in my possession or under my control.

5. I have listed on the reverse hereof all patents and patent applications which have been taken out or filed in my name and also have listed (with a short description) all unpatented inventions which I have made prior to entering the employ of Colt's. I represent that this list is complete and agree that only those patent patent applications and inventions listed and described on the reverse hereof are to be excluded from this agreement.

6. I further agree that I will not, during the term of this agreement, accept any employment from, or perform any services for, any person, firm or other company engaged in the development and/or manufacture of products of the general character in the process of development or produced by Colt's.

/S/ [Signature Unknown]
Witness

/S/ Charles R. Christianson
Signature of Employee

/S/ 5/26/70
Date

"EXHIBIT C"

COLT INDUSTRIES OPERATING CORP**Termination Certification**

During the course of my employment by Colt Industries Operating Corp (heretofore sometimes known as Colt's Inc. and Colt's Patent Firearms Company, Inc.) I have had access to design data, process and manufacturing information, and/or accounting, sales, production costs or similar data all of which is deemed by Colt Industries Operating Corp to be proprietary trade secrets and confidential information and may have been in the possession of certain manuals, blueprints, specifications, memoranda, diaries, notebooks and other documents pertaining to the company's business.

I hereby certify that I have accounted for and returned all material of whatever kind containing company information received or prepared by me in connection with my employment and that I have retained no copies or reproductions or excerpts of such material.

WITNESSED:

/S/ [Signature Unknown] /S/ Charles R. Christianson

DATE /S/ 6/27/75

"EXHIBIT D"

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

CHARLES R. CHRISTIANSON and)	
INTERNATIONAL TRADE SERVICES,)	
INC., a Massachusetts)	
corporation,)	
<i>Plaintiffs,</i>)	
	)	Civil Action
vs.	)	No. 84-4056
)	
COLT INDUSTRIES OPERATING)	
CORP, a Delaware Corporation,)	
)	
<i>Defendant.</i>)	

REPLY TO COUNTERCLAIMS

CHARLES R. CHRISTIANSON ("Christianson") and INTERNATIONAL TRADE SERVICES, INC. ("ITS"), by their attorneys, Katz, McAndrews, Durkee, Balch & Lefstein, P.C., without waiving their right to claim costs, expenses and attorney's fees against defendant pursuant to Rule 41(d) of the Federal Rules of Civil Procedure on account of defendant's prior dismissal of Civil Action No. 83-4072 against plaintiffs and its representment of the claims there asserted by the filing of the subject counterclaims, hereby reply to the affirmative defenses and counterclaims of defendant ("defendant" or "Colt"), as follows:

1 - 27. Pursuant to Rule 7(a) of the Federal Rules of Civil Procedure, make no response to paragraphs 1 through 27 of defendant's Answer for the reason that no response is allowed.

28 - 34. Deny affirmative defenses First through Sixth.

35. Admit paragraph 35.

36. Admit paragraph 36.

37. Admit paragraph 37.

38. With respect to paragraph 38, admit the existence of the statutes cited and that the counterclaims purport to be brought pursuant to said statutes, but deny that defendant has any valid claims pursuant to the cited statutes. Admit that venue is proper in this district.

39. With respect to paragraph 39, admit that Colt is in the business, *inter alia*, of production and sale of firearms, that during the late 1950's and early 1960's, Colt acquired certain rights to inventions and patents with respect to the M-16, which patents for the most part have now expired, and deny the remainder of the paragraph.

40. With respect to paragraph 40, state that the Principal Register trade mark numbers 825,581 and 827,453 speak for themselves, and deny the remainder of the paragraph.

41. With respect to paragraph 41, admit that the United States Defense Department designated the Army's 5.56mm. automatic rifle as an M-16, but deny the remainder of the paragraph.

42. Deny paragraph 42.

43. Deny paragraph 43.

44. Deny paragraph 44.

45. With respect to paragraph 45, admit that Colt has developed detailed product drawings of the components of the "M-16" rifle. Admit that Colt has placed a proprietary legend on some of its drawings, deny that the legend has validity, and deny the remainder of paragraph 45.

46. With respect to paragraph 46, admit that Colt entered into a patent license agreement with the United States government, Department of the Army, with respect to the "M-16" and that Colt also entered into agreements with the foreign governments named, with the exception of Canada, of which plaintiffs have no knowledge, and have no knowledge that the foreign agreements have expired. Deny all other allegations in paragraph 46.

47. Deny paragraph 47, and state affirmatively that Colt has no trade secrets in the information and proprietary drawings described.

48. With respect to paragraph 48, admit that Colt and the United States government have subcontracted with certain parts and accessories suppliers with respect to the M-16, and admit that Christianson has been aware that Colt during the life of the applicable patents claimed that its alleged proprietary drawings were to be protected pursuant to contractual obligations, but deny the remainder of the paragraph, and deny that the claimed contractual obligations had or have any validity particularly after the expiration of the applicable patents.

49. With respect to paragraph 49, admit that defendant Christianson was an employee of Colt from 1970 through 1975, but believe that the precise dates set forth in the counterclaims are incorrect. Admit the second sentence of paragraph 49, except deny that he was a project specialist. Admit that Christianson had some awareness that Singapore, the Philippines and Korea obtained drawings and technical data through their licenses with Colt. Deny the remainder of paragraph 49.

50. With respect to paragraph 50, admit that Christianson signed Exhibits A through C attached to the counterclaims, state affirmatively that the exhibits speak for themselves, deny all statements in paragraph 50 that are inconsistent with said exhibits, and state affirmatively that depending on the construction given one or more of said exhibits, the same are void for the reasons set forth in paragraph 126, *infra*.

51. With respect to paragraph 51, admit that Christianson was aware that Colt placed restrictive legends on some of its product drawings for M-16 rifle parts, and had some awareness of the purported obligations of the Philippines and Korea. Deny the remainder of paragraph 51 and state affirmatively that after the applicable patents expired there could be no misuse or improper disclosure of Colt's alleged proprietary technical information or drawings since Colt no longer had any proprietary rights to said information or drawings.

52. Deny paragraph 52 and deny that Colt has any proprietary trade secrets pertaining to the M-16 rifle following the expiration of the applicable patents.

53. Deny paragraph 53.

54. With respect to paragraph 54, admit that within a month after leaving Colt's employ Christianson for ITS received product drawings from the Philippine government which have markings on them that speak for themselves, but which drawings were represented by the Philippine government as not being proprietary to Colt, which representation was ultimately concurred in by Colt. Admit that ITS entered into a contract with the Philippine government to supply forgings and castings, but deny that Christianson did, and state that the reference to, "Colt's Philippine licensee," is immaterial and irrelevant.

55. Admit paragraph 55, but state affirmatively that Christianson's knowledge that Casting Engineers and Martin Marietta were Colt suppliers came from the Philippine government, and that the Philippine government informed Christianson that obtaining quotations from those companies was proper, which representations were ultimately concurred in by Colt.

56. With respect to paragraph 56, deny that Christianson engaged in any misrepresentations, deny that Colt relied on any misrepresentations, deny that paragraph 33 sets forth any specific misrepresentations, admit that Colt advised ITS in March 1976 that Colt would not object if ITS fulfilled certain contracts, but state affirmatively that the nature of the permission extended was broader than described in paragraph 56. Admit that in certain correspondence, but not in face to face meetings that the correspondence purported to summarize, Colt advised that it was not waiving any rights it "may" have as to future situations, state affirmatively that Colt in no manner invoked any claimed rights as to future situations, instead indicated that permission was extended on an "*ad hoc*" basis in the correspondence, and for approximately eight years following said advice, Colt never imposed any restrictions against ITS or Christianson as to the rights it "may" have had.

57. With reference to paragraph 57, admit that Christianson and ITS never sought further permission after March 1976 to enter into new contracts for the reason that no further permission was needed, the same having been previously given, and never withdrawn. Admit that ITS entered into new contracts to supply M-16 rifle parts, but deny that the same was without permission from Colt, the same having previously been given, and that additionally no permission was needed after the expiration of the applicable patents.

58. With respect to paragraph 58, deny that Christianson or ITS ever used Colt drawings, and state affirmatively that non-Colt drawings were always employed by him and his company in connection with purchasing and selling M-16 parts to customers. If Colt drawings were in fact utilized by suppliers of ITS, it was without authorization or direction from ITS. Admit that ITS obtained drawings with a CT prefix, and admit that Christianson ultimately recognized these drawings to be similar to Colt drawings, but not immediately upon their receipt. Admit that ITS used the CT drawings and Philippine drawings for quotations. Deny that drawings obtained from the Philippine government were Colt drawings, and state affirmatively that Colt has acknowledged that these drawings were non-Colt drawings.

59. With respect to paragraph 59, admit that ITS began to sell to customers in the United States its excess inventory of M-16 rifle parts, but deny that the same had been obtained through the use of Colt drawings. Admit that the same had been obtained through the use of Philippine or Singapore drawings, but that the same were not Colt drawings as that term had previously been agreed to by Colt. Deny the remainder of paragraph 59.

60. With respect to paragraph 60, admit that ITS continued to sell M-16 rifle parts in the United States until its entire inventory was liquidated in early 1984, but deny that it sold "these" M-16 rifle parts if said term refers to rifle parts obtained through the use of Colt drawings. Admit that ITS continued to dispose of its inventory after Colt commenced a

lawsuit against Christianson and ITS. Admit that ITS had sold approximately \$50,000.00 worth of M-16 rifle parts since October 1983, but deny that the parts were obtained through the misuse of Colt's proprietary information.

REPLY TO FIRST COUNTERCLAIM

61. Plaintiffs repeat and reallege in response to paragraph 61 their reply set forth in paragraphs 35 through 60 above.

62. Deny paragraph 62.

63. Deny paragraph 63.

64. Deny paragraph 64.

REPLY TO SECOND COUNTERCLAIM

65. Plaintiffs repeat and reallege their reply to paragraphs 35 through 60 and paragraph 62.

66. Deny paragraph 66.

REPLY TO THIRD COUNTERCLAIM

67. Plaintiffs repeat and reallege their reply to paragraphs 35 through 60 above.

68. Deny paragraph 68.

69. Deny paragraph 69.

70. Deny paragraph 70.

71. Deny paragraph 71.

REPLY TO FOURTH COUNTERCLAIM

72. Plaintiffs repeat and reallege their reply to paragraphs 35 through 60, and 68 through 70.

73. Deny paragraph 73.

74. Deny paragraph 74.

REPLY TO FIFTH COUNTERCLAIM

75. Plaintiffs repeat and reallege their reply to paragraphs 35 through 60 above.

76. Deny paragraph 76.

77. Deny paragraph 77.

REPLY TO SIXTH COUNTERCLAIM

78. Plaintiffs repeat and reallege their reply to paragraphs 35 through 60 and 76 above.

79. Deny paragraph 79.

80. Deny paragraph 80.

REPLY TO SEVENTH COUNTERCLAIM

81. Plaintiffs repeat and reallege their reply to paragraphs 35 through 60 above.

82. Deny paragraph 82.

83. Deny paragraph 83.

84. Deny paragraph 84.

REPLY TO EIGHTH COUNTERCLAIM

85. Plaintiffs repeat and reallege their reply to paragraphs 35 through 60 and paragraphs 82 and 83 above.

86. Deny paragraph 86.

REPLY TO NINTH COUNTERCLAIM

87. Plaintiffs repeat and reallege their reply to paragraphs 35 through 60 and 82 above.

88. Deny paragraph 88.

89. Deny paragraph 89.

REPLY TO TENTH COUNTERCLAIM

90. Plaintiffs repeat and reallege their reply to paragraphs 35 through 60 and 82 above.

91. Deny paragraph 91.

92. Deny paragraph 92.

REPLY TO ELEVENTH COUNTERCLAIM

93. Plaintiffs repeat and reallege their reply to paragraphs 35 through 60 and paragraph 82 above.

94. Deny paragraph 94.

FIRST DEFENSE TO ALL COUNTERCLAIMS

95. Defendant's counterclaims do not state a cause of action against the plaintiffs and fail to state a claim upon which relief can be granted.

SECOND DEFENSE TO ALL COUNTERCLAIMS

96. As a second defense to all of the counterclaims, the Patent License Agreement which Colt entered into with the United States government, Department of the Army, in or about June 30, 1967, with respect to the M-16 and the agreements Colt entered into with the Philippines, Korea and Singapore with respect to the M-16 are, and were, invalid and unenforceable.

THIRD DEFENSE TO ALL COUNTERCLAIMS

97. For a third defense to all of the counterclaims, the plaintiffs have not committed any acts of trade mark infringement, unfair competition, false designation of origin or any other tort against Colt.

FOURTH DEFENSE TO ALL COUNTERCLAIMS

98. For a fourth defense to all of the counterclaims, Colt is barred from obtaining any relief in respect to any of the causes

of action asserted in the counterclaim by reason of Colt's *laches* in respect to such claimed causes of action.

FIFTH DEFENSE TO ALL COUNTERCLAIMS

99. For a fifth defense, Colt is barred from obtaining any relief in respect to any of the counterclaims by reason of Colt's acquiescence, waiver and consent to all of plaintiffs' actions of which complaint is now made.

SIXTH DEFENSE TO ALL COUNTERCLAIMS

100. For a sixth defense, Colt is barred from obtaining any relief in respect to any of the counterclaims because of acts of Colt giving rise to estoppel.

SEVENTH DEFENSE TO ALL COUNTERCLAIMS

101. For a seventh defense to all of the counterclaims, there is no liability on the part of the plaintiffs because plaintiffs have competed fairly with Colt.

EIGHTH DEFENSE TO ALL COUNTERCLAIMS

102. For an eighth defense to all of the counterclaims, there is no liability on behalf of the plaintiffs because the products and advertising of ITS prominently display the ITS trade name.

NINTH DEFENSE TO ALL COUNTERCLAIMS

103. For a ninth defense to all of the counterclaims, there has been no actual confusion resulting from activities of the plaintiffs and there is no reasonable likelihood of confusion.

TENTH DEFENSE TO ALL COUNTERCLAIMS

104. For a tenth defense to all of the counterclaims, the term "M-16" may not be monopolized by Colt in that such term has been used by numerous parties and is available to all competitors.

ELEVENTH DEFENSE TO ALL COUNTERCLAIMS

105. For an eleventh defense to all of the counterclaims, the term "AR-15" may not be monopolized by Colt in that such term has been used by numerous parties and is available to all competitors.

TWELFTH DEFENSE TO ALL COUNTERCLAIMS

106. For a twelfth defense to all counterclaims, the features of Colt's rifle upon which it bases its claims are functional, and therefore, incapable of trade mark protection.

THIRTEENTH DEFENSE TO ALL COUNTERCLAIMS

107. For a thirteenth defense to all counterclaims, the term "M-16" has not obtained and cannot obtain secondary meaning so as to entitle it to legal protection. The term "AR-15" has not obtained and cannot obtain secondary meaning so as to entitle it to legal protection.

FOURTEENTH DEFENSE TO ALL COUNTERCLAIMS

108. For a fourteenth defense to all counterclaims, the use by the plaintiffs of the term "M-16" has been a fair use.

FIFTEENTH DEFENSE TO ALL COUNTERCLAIMS

109. For a fifteenth defense to all counterclaims, plaintiffs do not believe they have used the term "AR-15", but if the same had been used, it would have been a fair use since said term is not entitled to legal protection.

SIXTEENTH DEFENSE TO ALL COUNTERCLAIMS

110. For a sixteenth defense to all counterclaims, the term "M-16" is a generic term for a type of rifle and has no trade mark significance.

SEVENTEENTH DEFENSE TO ALL COUNTERCLAIMS

111. For a seventeenth defense to all counterclaims, the

term "AR-15" is a generic term for a type of rifle and has no trade mark significance.

EIGHTEENTH DEFENSE TO ALL COUNTERCLAIMS

112. For an eighteenth defense to all counterclaims, Colt's basic patents with respect to the M-16 and many of Colt's improvement patents on the original M-16 have expired. The five unexpired patents retained by Colt with respect to minor variations of the M-16 need not be infringed to manufacture the M-16. Unless the aforementioned patents were invalid through the wrongful retention of proprietary information in contravention of the United States Patent Act (35 U.S.C., §112), when such patents expired, anyone who has ordinary skill in the rifle making art is able to use the information and the expired patents for which Colt earlier had a monopoly position for seventeen years. Plaintiffs and/or anyone has the right to manufacture, sell and/or contract for the manufacture, marketing and selling of the M-16 and M-16 parts and components.

NINETEENTH DEFENSE TO ALL COUNTERCLAIMS

113. For a nineteenth defense to all counterclaims, Colt has engaged in and is engaged in a scheme and plan to maintain its dominant market position in the sale and manufacture of the M-16 after the expiration of the basic patents with respect to such, to monopolize and restrain competition in the domestic and foreign markets for the M-16 and M-16 parts and accessories.

TWENTIETH DEFENSE TO ALL COUNTERCLAIMS

114. For a twentieth defense to all counterclaims, Colt has engaged in, and is engaged in, the wrongful acquisition of patent monopolies with respect to the M-16 through the fraudulent procurement of patents without the required disclosure of the patent technology and the maintenance of such patent technology as a trade secret for the purpose of extending the patent monopoly beyond the expiration thereof.

TWENTY-FIRST DEFENSE TO ALL COUNTERCLAIMS

115. For a twenty-first defense to all counterclaims, Colt is attempting to unlawfully extend its monopoly with respect to the expired M-16 patents through restrictive covenants with suppliers and manufacturers of M-16 parts and accessories which require such suppliers to refrain from selling M-16 parts to anyone other than Colt and the United States Government.

TWENTY-SECOND DEFENSE TO ALL COUNTERCLAIMS

116. For a twenty-second defense to all counterclaims, Colt is unlawfully maintaining a monopoly of the market of the M-16 through restrictive covenants with licensees and subcontractors, including the United States Government and suppliers and manufacturers of M-16 parts and accessories, to protect and preclude the use of technical data contained in the basic M-16 patents after the expiration of such patents.

TWENTY-THIRD DEFENSE TO ALL COUNTERCLAIMS

117. For a twenty-third defense to all counterclaims, Colt is misusing its unexpired patents by contracting with parts suppliers to preclude the sale of any M-16's which contain parts covered by the unexpired patents.

TWENTY-FOURTH DEFENSE TO ALL COUNTERCLAIM

118. For a twenty-fourth defense to all counterclaims, Colt has unlawfully imposed resale restrictions upon the resale of the M-16 and M-16 parts and accessories by class 3 arms dealers in order to prevent plaintiffs or anyone other than law enforcement agencies from purchasing such.

TWENTY-FIFTH DEFENSE TO ALL COUNTERCLAIMS

119. For a twenty-fifth defense to all counterclaims, Colt is

coercing M-16 parts suppliers to agree to refrain from selling M-16 parts to anyone other than Colt and/or the United States government through letters designed to persuade such suppliers that Colt retains patent and proprietary rights with respect to the M-16 and that failure to comply with such demand will result in expensive and burdensome litigation.

TWENTY-SIXTH DEFENSE TO ALL COUNTERCLAIMS

120. For a twenty-sixth defense to all counterclaims, Colt, together with the United States Government and various suppliers and manufacturers of M-16 parts, and each of them, are engaging in a group boycott and refusal to make or sell M-16 parts and accessories for or to plaintiffs or anyone other than Colt and/or the United States Government.

TWENTY-SEVENTH DEFENSE TO ALL COUNTERCLAIMS

121. For a twenty-seventh defense to all counterclaims, Colt is disseminating threats and veiled threats of litigation in order to coerce and scare M-16 parts suppliers and purchasers of the M-16 to refrain from selling, purchasing or otherwise doing business with plaintiffs.

TWENTY-EIGHTH DEFENSE TO ALL COUNTERCLAIMS

122. For a twenty-eighth defense to all counterclaims, Colt intentionally interfered with the contractual relationships and prospective economic advantages of plaintiffs and with the probability of prospective contractual relations with numerous other persons and entities with an intent and design to disrupt such relationships by instituting the subject counterclaims and its predecessor litigation against plaintiffs in this court in Civil Action 83-4072 and then dismissing the same, all for the purpose and in furtherance of the scheme and plan of Colt to maintain its dominant market position in the sale and manufacture of the M-16 after the expiration of the basic patents with

respect to such, to monopolize and restrain competition in the domestic and foreign markets for the M-16 and M-16 parts and accessories.

TWENTY-NINTH DEFENSE TO ALL COUNTERCLAIMS

123. For a twenty-ninth defense to all counterclaims, Colt has abused process by initially filing its complaint against these plaintiffs in this court in Case No. 83-4072, then dismissing the same and now reasserting the subject counterclaims, and in Case No. 83-4072 seeking a preliminary injunction and subjecting plaintiffs to extensive discovery in Colt's unsuccessful effort to obtain such injunction, in that such uses of process were in bad faith for the reason that Colt had actual and constructive knowledge that plaintiffs had not infringed any proprietary rights of Colt, and that in fact what plaintiffs had done resulted initially from Colt's permission and/or the use of expired patents for which Colt had no rights, and said ill founded uses of process, both the initial suit in Case No. 83-4072 and the subject counterclaims, have not and are not employed to win a favorable judgment against plaintiffs, but are part of the purposeful drive of Colt to prevent plaintiffs from participating in the M-16 market in order to eliminate competition in such market. The ulterior purpose and motivation of Colt in so misusing process in the above-described manner is to obtain the following advantage over plaintiffs: to harass and overburden plaintiffs with legal expense, to prevent them, and deter others, from competing with Colt in the sale of the M-16, and all of their actions have had the effect of putting ITS out of business and have cost Christianson the loss of employment with ITS and the only occupation for which he has extensive experience and training.

THIRTIETH DEFENSE TO ALL COUNTERCLAIMS

124. For a thirtieth defense to all counterclaims, plaintiff Charles Christianson did not violate any of the exhibits attached to the counterclaims.

THIRTY-FIRST DEFENSE TO ALL COUNTERCLAIMS

125. For a thirty-first defense to all counterclaims, none of the exhibits attached to the counterclaims contain restrictions that form the basis of allegations of misconduct against plaintiffs.

THIRTY-SECOND DEFENSE TO ALL COUNTERCLAIMS

126. For a thirty-second defense to all counterclaims, if it may be said that plaintiff Christianson violated any of the exhibits attached to the counterclaims, to the extent of said violations, the exhibits are void for the reason that they are unreasonable as to time and place and would have the effect of prohibiting Christianson from making a living in the only occupation for which he has training and experience.

WHEREFORE, in response to the counterclaims of defendants, plaintiffs pray as follows:

1. That defendant Colt take nothing by its counterclaims;
2. For costs of suit herein;
3. For attorney's fees herein; and
4. For such further relief as the court deems just and proper.

CHARLES R. CHRISTIANSON and
INTERNATIONAL TRADE
SERVICES, INC.,
Plaintiffs

By: /S/ Stuart R. Lefstein

For:
KATZ, McANDREWS, DURKEE,
BALCH & LEFSTEIN, P.C.
Attorneys for Plaintiffs
200 Plaza Office Building
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Telephone: 309-788-5661

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

CHARLES R. CHRISTIANSON and)
INTERNATIONAL TRADE)
SERVICES, INC., a)
Massachusetts corporation,)

Plaintiffs,)

vs.)

COLT INDUSTRIES OPERATING)
CORP., a Delaware)
corporation,)
Defendant.)

COLT INDUSTRIES OPERATING)
CORP., FIREARMS DIVISION,)

Plaintiff,)

vs.)

SPRINGFIELD ARMORY, INC.,)
ROCK ISLAND ARMORY, INC., and)
GREEN RIVER ARMORY, INC.,)

Defendants.)

) Civil Action
) No. 84-4056

) FILED
) JUN 27 1984
) Robert J. Kauffman,
) Clerk
) U.S. District Court
) Central District of
) Illinois

) Civil Action
) No. 83-4072

ORDER FOR CONSOLIDATION

This matter coming before the Court pursuant to a Motion for Consolidation filed in the above causes by CHARLES R. CHRISTIANSON and INTERNATIONAL TRADE SERV-

ICES, INC., and the Court being advised, hereby allows said motion and Orders that Civil Action No. 84-4056 and Civil Action No. 83-4072 are hereby consolidated for discovery purposes and for trial in accordance with Rule 42(a) of the Federal Rules of Civil Procedure.

Dated this /s/ 27th day of /s/ June, 1984.

/s/ Robert D. Morgan
United States District Judge

ENTRY FROM DISTRICT COURT DOCKET SHEETS

NR Charles R. Christianson, et al vs. Colt

84-4056

Industries Operating Corp.

1984

Sept. 5

Consent Judgment filed and entered in Case No. 83-4072. That case is now dismissed. This case, No. 84-4056 is still pending. Final Pre-Tr. Conf. set for Thur. Oct. 11 and Jury Trial set for Wed. Nov. 7, 1984 are still set for those dates.

- * -

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

CHARLES R. CHRISTIANSON and)	
INTERNATIONAL TRADE)	
SERVICES, INC., a Massachusetts)	
corporation,)	
)	
<i>Plaintiffs,</i>	)	Consolidated
	)	Civil Action
v.	)	Nos. 84-4056
	)	and 83-4072
)	
COLT INDUSTRIES OPERATING)	
CORP., a Delaware)	
corporation)	
)	
<i>Defendant.</i>)	

COUNT II OF COMPLAINT

1. This Count is instituted against the above-named defendant and is predicated upon defendant's tortious interference with business relationships and expectancies of plaintiffs.

2 - 21. Plaintiffs repeat and reallege paragraphs 2 through 21 of Count I of the complaint.

22. Colt had a valid business relationship and expectancy to do business with Casting Engineers of Illinois to the end that Casting Engineers would supply M-16 parts to ITS for sale to other customers using tooling that ITS had previously purchased.

23. Colt had knowledge of this relationship and intentionally interfered with it by causing Casting Engineers to terminate its relationship in 1983 with ITS and to thereafter refuse to supply it with any parts for resale to customers.

24. Additionally, Colt urged customers of ITS not to do

business with ITS with respect to M-16 parts, having knowledge of a business relationship or expectancy with these customers.

25. The actions of Colt in interfering with the relationship between plaintiffs and Casting Engineers and with plaintiff's potential customers was intentional and resulted in damage to ITS, in that ITS was forced out of business and Christianson was prevented from earning a living as its president and chief operating officer, which business was his chosen profession.

26. As a result of defendant's intentional interference, ITS and Christianson have been damaged in the approximate amount of \$7,700,000.

WHEREFORE, plaintiffs pray for the following:

1. That they be awarded compensatory damages in the approximate amount of \$7,700,000;

2. That they be awarded punitive damages in the amount of ten million dollars;

3. That the court award such other and further relief as may be deemed just and proper.

CHARLES R. CHRISTIANSON and
INTERNATIONAL TRADE SERVICES,
INC.,
a Massachusetts corporation,
Plaintiffs

By: /S/ Stuart R. Lefstein

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200 Plaza Office Building
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and

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 One Indiana Square, Suite 2600
 Indianapolis, IN 46204
 Telephone: 317-634-3456
Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF ILLINOIS
 ROCK ISLAND DIVISION**

CHARLES S. [sic.] CHRISTIANSON)	
and INTERNATIONAL TRADE)	
SERVICES, INC.)	
)	
<i>Plaintiff,</i>)	
	)	Civil Action
v.	)	No. 84-4056
)	
COLT INDUSTRIES OPERATING)	
CORP.)	
)	
<i>Defendant.</i>)	

**ANSWER AND COUNTERCLAIMS
 TO COUNT II OF THE AMENDED COMPLAINT**

Defendant Colt Industries Operating Corp. ("Colt"), by its attorneys Bozeman, Neighbour, Patton & Noe, Parker Auspitz Neesemann & Delehanty P.C., and William Brinks Olds Hofer Gilson & Lione Ltd., for its answer to the correspondingly numbered paragraphs of Count II of the amended complaint of plaintiffs Charles S. Christianson ("Christianson") and International Trade Services, Inc. ("ITS"), avers:

1. Denies.
2. - 21. Repeats and realleges its prior responses to paragraphs 2 through 21 of Count I of the complaint.
22. - 26. Denies.

Affirmative Defenses and Counterclaims

27. Repeats and realleges the affirmative defenses and counterclaims set forth in Colt's Answer and Counterclaims served June 4, 1984.

Eighth Affirmative Defense

28. All actions by Colt complained of by plaintiffs were attempts by Colt to state facts, answer inquiries, and to assert and protect in good faith a legally protectible interest.

WHEREFORE, Colt demands judgment against plaintiffs dismissing the amended complaint and for all the relief demanded in Colt's Answer and Counterclaims served June 4, 1984.

COLT INDUSTRIES OPERATING
CORP,
Defendant

by /S/ Anthony M. Radice
for PARKER AUSPITZ NEESEMAN
& DELEHANTY P.C.

Attorneys for Defendant

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- and -

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- and -

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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

CHARLES R. CHRISTIANSON and)
INTERNATIONAL TRADE)
SERVICES INC., a Massachusetts)
corporation,)

Plaintiff,

v.

COLT INDUSTRIES OPERATING)
CORP, a Delaware)
corporation,)

Defendant.

) Consolidated
) Civil Action
) Nos. 84-4056
) and 83-4072

MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure plaintiffs move for summary judgment with respect to particular matters as described below on the following grounds:

1. As to the matters described, there is no genuine issue as to any material fact and plaintiffs are entitled with respect to said matters to judgment as a matter of law.

2. Basic and fundamental to the subject lawsuit is whether or not at any of the times described in the complaint and counterclaims defendant possessed and was entitled to maintain as exclusive proprietary rights its claimed trade secrets with respect to the M-16 rifle and rifle parts. For the reasons advanced in a supporting brief (with an accompanying appendix of documents) filed contemporaneously herewith, none of these trade secrets were valid as a matter of law.

3. Because the evidence is undisputed that defendant successfully interfered with business relationships and expectan-

cies of plaintiffs with others, depriving plaintiffs of these relationships and expectancies, predicated on alleged trade secrets or proprietary rights which were invalid, plaintiffs are entitled to judgment on liability with respect to Count II as a matter of law for unlawfully interfering with these relationships. A separate memorandum with accompanying documents is filed contemporaneously herewith in support of this aspect of the subject motion.

4. The Fifth and Sixth counterclaims of Colt are predicated solely on the validity of the alleged trade secrets of Colt, and since these alleged trade secrets are invalid as a matter of law, no liability exists on these counterclaims as a matter of law, and the same should be dismissed with prejudice.

5. To the extent plaintiffs' claims or defendant's counterclaims may remain unresolved after this motion is decided, plaintiffs request the Court, in accordance with Rule 56(d), of the Federal Rules of Civil Procedure, to determine that Colt's trade secrets are invalid and that plaintiffs' claim of invalidity shall be taken as established with respect to all claims and counterclaims to which said issue is material.

WHEREFORE, plaintiffs pray that their motion be allowed.

CHARLES R. CHRISTIANSON and
INTERNATIONAL TRADE SERVICES,
INC., a Massachusetts corporation,
Plaintiffs

By: /s/ Stuart R. Lefstein
Stuart R. Lefstein

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and

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Indianapolis, IN 46204
Telephone: 317-634-3456

Attorneys for Plaintiffs

AFFIDAVIT OF CHARLES R. CHRISTIANSON

Charles R. Christianson, being first duly sworn on oath, states:

1. I am the president of International Trade Services, Inc., a Massachusetts corporation ("ITS").

2. Commencing in the year 1976 I began purchasing parts for M-16 rifles from Casting Engineers of Niles, Illinois. ITS purchased tooling for use by Casting Engineers for the production of these parts. This tooling was paid for by ITS and was constructed by Casting Engineers from drawings which ITS had received from the Government of the Philippines.

3. At the time I commenced purchasing parts from Casting Engineers I believed, based on conversations I had with Colt personnel, including Paul Gubbins, that I had permission from Colt to utilize this tooling. My belief in this regard was confirmed in correspondence from Mr. Gubbins, dated March 11, 1976, to me and in a letter from the president of Casting Engineers dated March 12, 1976, which enclosed a copy of a telegram from Colt to Casting Engineers.

4. Thereafter, and through the year 1983, I continued to purchase M-16 parts for resale to various customers. ITS had no comparable alternative source of supply for M-16 parts because Casting Engineers not only utilized ITS tooling for the preparation of castings, but finished M-16 parts from its own machining line. I was aware of no other company that possessed comparable capabilities as Casting Engineers.

5. While the business of ITS was not solely built on its

relationship with Casting Engineers, this relationship was critical to a financially successful operation of ITS.

6. In September of 1983 I had a pending order with Casting Engineers which that company initially delayed in fulfilling. Ultimately, after sending them a telex demanding shipment (Ex.12), the order was filled. However, in approximately that time frame I was advised by representatives of Casting Engineers that it would no longer fill any orders of ITS for the reason that Colt had demanded that Casting Engineers cease doing business with ITS with respect to M-16 parts, and, in that connection, specifically rejected an order I placed in September 1983. I made notes in the regular course of business of some of these conversations with representatives of Casting Engineers. (Ex.11).

7. ITS had pending orders from customers which, as a result of Casting Engineer's refusal to supply parts, could not be filled, and the customers were so advised. (See copies of some of these orders, Ex.10).

8. Thereafter ITS received orders from customers which could no longer be filled. ITS advised these customers that they could not be filled because of the cutoff of parts from Casting Engineers. Many of these orders were received orally by telephone.

9. Due to the inability to obtain M-16 parts from Casting Engineers, ITS was no longer able to operate on a business like basis and by the end of 1983 was substantially in debt beyond its ability to satisfy the same. In March of 1984, pursuant to a foreclosure instituted against ITS by a bank in Massachusetts, an auction of ITS assets was held. After the auction, ITS ceased doing business, but the company continues to exist as a corporate entity.

10. In addition to the foregoing, Mr. Bruce Lambert of Lone Star Ordnance advised me that his company could no longer purchase any M-16 items from ITS because of correspondence and threats his company had received from Colt.

11. Additionally, representatives of Aerospace Nylok advised that they could no longer supply to me butt stock screws from a drawing that I had submitted to them which I had reverse engineered. Colt took the position that I had not reversed engineered the screw. (See Ex.9).

12. ITS lost business as a result of Aerospace Nylok and Lone Star Ordnance ceasing to do business with ITS.

13. Presently, ITS has a negative net worth and owes substantial sums to creditors.

14. I personally have lost my annual salary that I was receiving from ITS, and that company no longer pays me any salary.

/s/ Charles R. Christianson

Signed and sworn to before me this /s/ 4th day of October, 1984.

/s/ Stuart R. Lefstein
Notary Public

CASTING ENGINEERS

Division of Consolidated Foundries and Mfg. Corp.
2323 N. Bosworth Avenue
Chicago, Illinois 60614
Phone 281-5940 Area Code 312

The Wonderful World of Investment Castings

March 12, 1976

Mr. Charles R. Christianson
President
International Trade Services, Inc.
P.O. Box 1513
Springfield, Massachusetts 01101

Dear Charlie:

Enclosed is a copy of telegram received through Western Union from Colt Industries, Colt's Firearms Division, sent by Mr. T.J.

JA-62

Rush, Manager of Purchasing stating that Casting Engineers will be permitted to supply casting for the M-16 program to International Trade Services, Inc.

Effective this date, I have initiated steps to release to production the entire project covered by your purchase order to manufacture M-16 components as per your purchase order.

Trusting there will not be any more legal confusion on this project, I remain

Very truly yours,

CASTING ENGINEERS

/S/ John C. Murar
John C. Murar
President

JCM/sja
enclosure

CC: Mr. M. White/Colt
Mr. T. MacDonough/Colt
Mr. R. O'Drobinak/Consolidated Foundries & Mfg. Corp.
T. Nord
R. Burke
J. Cardaras
D. Murar
J. Przybocki
[last name Unknown]

WIRE TAKEN OVER PHONE FROM WESTERN UNION

3/11/76 4:05pm/sja

To: John Murar
Casting Engineers

You may supply M-16 castings to International Trade Services

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Inc. provided parts are not ordered against Colt drawings and Colt tooling is not utilized.

FROM: T. J. Rush
Manager Purchasing
Colt's Firearms
Hartford, Connecticut

sja

COLT INDUSTRIES Firearms Division
Charter Oak Boulevard
West Hartford, Connecticut 06101
203/236-0651

Paul G. Gubbins
General Counsel

March 11, 1976

International Trade Services, Inc.
Clinton Street Extension
Post Office Box 1513
Springfield, Mass. 01101

ATT: Mr. Charles R. Christianson, President

SUBJECT: PHILIPPINE ORDER FOR CASTINGS,
FORGINGS AND EXTRUSIONS

Gentlemen:

This is to confirm my meeting yesterday with Mr. Christianson and Mr. Bogoff.

Through that meeting and through research of our files and questioning of our representatives, the following facts appear to apply to this situation:

Your company has discussed with the Philipping Government, from time to time, various possible aspects of doing business with them. They have told you that they have the right to purchase from sources other than Colt, castings, forgings and extrusions to be used in the manufacture of M16 rifles. You

have told us that they have made this representation to you in writing and, in effect, have agreed in writing to hold you harmless from any claim by Colt that you have no right to furnish such items to them. You stated to me that you have contracted with certain suppliers to furnish these items to you for sale to the Philippine Government; that two of the suppliers are Martin Marietta and Casting Engineers, Inc., who are also suppliers of these items to Colt. You stated that both Martin Marietta and Casting Engineers, Inc. contracted Colt representatives upon your offering purchase orders to them, and were told by Colt representatives that so long as they did not use Colt-furnished tooling or Colt-furnished drawings or specifications, Colt could have no objection to their furnishing these items to you. You have stated to us, and those companies have stated to us, that they are using new tooling not obtained from Colt and drawings and specifications obtained, not from Colt, but from the Government.

Colt representatives had a meeting in Hartford in November of 1974 with representatives of the Government of the Philippines and with representatives of Elitool, the private Philippine corporation which is making the M16 rifles for the Philippine Government. At the meeting, it was apparently agreed that the Government had the right to purchase subject castings, forgings and extrusions from suppliers other than Colt. Several of the Colt representatives present at that meeting remember that the basis for this agreement was that the representatives of the Philippine Government stated that there was or would be capacity in the Philippines for the production of these items, and that it would be politically and economically wise for them to obtain such items from inside their own country. We believe that it was mentioned that Reynolds was building or expanding a plant in the Philippines which would have such capabilities and capacity. The written minutes of such meeting do not, however, mention this background.

The foregoing is a question we intend to take up with the Government.

As to the existing situation, however, where you have entered

into binding contracts with Martin Marietta and Castings Engineers, Inc., and have expended monies for tooling to be used other than Colt-furnished tooling, we have agreed that upon an "ad hoc" basis, we will and have advised these two companies that we will not object to their fulfilling their contracts with you. This is not to be deemed a waiver on our part as to any rights -- proprietary, contractual or otherwise -- we may have as to any future situations of this kind, and to the extent that this is a waiver of our rights as to the existing contracts you have with those suppliers, it is to be strictly limited to subject contracts.

We trust that this clears up, for at least the time being, the present problem which was the subject of our meeting.

Yours very truly,

/S/ Paul A. Gubbins

Paul G. Gubbins

PGG/jcc

cc: C.E. Warner

H.P. Stone

E.T. Reardon

Merritt White

Terry Rush

W.D. Ford

COLT INDUSTRIES

Firearms Division

P.O. Box 1868

Hartford, Connecticut 06102

203/236-6311

April 12, 1983

Casting Engineers

5701 West Touhy Avenue

Niles, IL 60648

Attn: Mr. Donald Peluso

Dear Mr. Peluso,

Your concern, as relayed by R. Bruneau, regarding the

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implications of your current production of M16 Hammers for International Trade Services has been forwarded to our legal counsel. As advised in our letter to you dated January 26, 1983, attached, any production of M16 parts for other than the U.S. Government or Colt is in violation of our proprietary rights in connection with the manufacture of the M16. We request your assistance and cooperation in terminating all third party solicitations or production orders in your possession.

As expressed in your conversation with R. Bruneau on March 30, 1983, it is my understanding that Casting Engineers does not intend to jeopardize its long-standing relationship or future business with Colt. We accept and appreciate your intentions. Please provide us, within 10 days, written confirmation that you have ceased and desisted all production and shipments and that you will refrain from any future shipments of M16 components to parties other than Colt or the U.S. Government.

Very truly yours,

/S/ H.P. Stone
H.P. Stone
V.P. Military Operation

HPS/p

cc: P. Gubbins, General Counsel
R. J. Bruneau

CASTING ENGINEERS

Division of Consolidated Foundries and Mfg. Corp.
5701 W. Touhy Avenue
Niles, IL 60648
647-7979 Area Code 312

The Wonderful World of Investment Castings

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May 16, 1983

Mr. H.P. Stone
Vice President, Military Operations
Colt Industries
Colt's Firearms Division
150 Huyshope Avenue
Hartford, Connecticut 06102

Dear Mr. Stone:

Please be advised that Casting Engineers is in compliance with your letters of May 4, 1983 and April 12, 1983 requesting that Casting Engineers cease and desist all production of M-16 components to any source other than Colt Industries or the U.S. Government.

Further we will not utilize any Colt or Government owned tooling to produce any components for any "third party" unless authorized in writing by either Colt or the U.S. Government.

Very truly yours,

CASTING ENGINEERS

/S/ D C Peluso
Donald C. Peluso
President

DCP/sjh

(Written Notes)

9/16/83

Called Casting Engrs. (Mr. Tony Nord) at approx 2:30 PM.

Wanted to place order PO# 11365 for
5000 Hammers
2000 Triggers
5000 Bolt Catches
2000 Selectors

Advised by Tony Nord that Casting Engrs. could not accept Orders based on letter from Colt. Tony put Dennis Coughman

on telephone. Explained how we had been buying for years to dwgs. other than Colts.

Coughman to review file and advise position of Casting Engineers.

Tony stated that matl. due us on prior order (1500 bolt Catch & 1115 Hammers) would not be held up.

PARKER AUSPITZ NEESEMAN & DELEHANTY P.C.
415 Madison Avenue
New York, New York 10017
(212) 355-4415

April 10, 1984

Mr. Bruce Lambert
Lone Star Ordnance
P. O. Box 29404
San Antonio, Texas 78229

Dear Mr. Lambert:

I would like to clarify some points raised in your March 7, 1984, letter, as well as your December 30, 1983, letter to Mr. Stone, which has been referred to me.

Enclosed is a copy of Colt's federal registration for "AR-15." "M16" is not federally registered, nor did I state it was. It is a common law mark associated with Colt and a representation of quality and designation of origin under the federal Lanham Act. "M16" means the rifle and parts are manufactured by or under license from Colt and accepted by the United States Army as its standard rifle, which meets or exceeds all of the military specifications, including government specified inspection and testing.

You raise the question of "reverse engineering." In theory, "reverse-engineering" may not infringe Colt's rights, provided, among other things, that the designer legitimately "reverse-engineers" parts that do not infringe any unexpired Colt patents, using information derived solely from his analysis of the

parts and not Colt or Colt-derived proprietary information. In practice, however, Colt and others who have considered the problem, in that the resulting parts would not in fact be equivalent to and interchangeable with Colt parts. A part that does not carry an assurance of interchangeability with existing "M16" parts should not in any circumstances be designated, labeled, or advertised as an "M16" part.

I would also like to clarify what may be a misunderstanding about what you refer to as "the right to re-sell parts that are available in the open market from legitimate sources." We would not dispute your statement as such, but point out two crucial questions: What is a legitimate source, and how are re-sold parts being labeled and advertised? We do not as yet know the source of the parts you are selling, and one of the purposes of my letter was to inquire about your sources and to put you on notice of one flagrantly illegitimate source of which we have become aware; Charles Christianson and his International Trade Services company. Foreign licensees of Colt are also forbidden by contract as well as by United States laws and regulations to make such sales.

In fact, the only legitimate source of "M16" parts is Colt, inasmuch as the United States Government, Colt's only current licensee, is forbidden by its license from selling "M16" rifles or parts commercially and by its own regulations from selling usable surplus parts; and suppliers of Colt and the Government are contractually precluded from selling parts made with Colt proprietary data, as are foreign licensees of Colt. If you are selling used or reconditioned "M16" parts, then it is false or deceptive to designate, label or advertise them as though they were new.

Because of your specific inquiry, I advise you that Colt is the owner by assignment of the following unexpired United States Letters Patent relating to certain features of Colt's "M16" rifles: No. 3,366,011 (Buffer Assembly) issued January 30, 1968; No. 3,618,2 (Buttstock Assembly) issued November 9, 1971; No. 3,440,751 (Magazine) issued April 29, 1969; and No. 3,619,929 (Magazine) issued November 16, 1971; and No.

3,348,328 (Adjustable Buttstock Assembly) issued October 24, 1967.

If your letters were written in good faith ad to avoid potential litigation, as I assume they were, then I would urge you to write or call me about the sources of the parts you have been selling and to ensure that your future sales and advertising do not violate Colt's rights.

Very truly yours,

/S/ Kim J. Landsman
Kim J. Landsman

KJL:mp

PARKER AUSPITZ NEESEMAN & DELEHANTY P.C.
415 Madison Avenue
New York, New York 10017
(212) 355-4415

September 14, 1984

Mr. Bruce Lambert
Lone Star Ordnance
P. O. Box 29404
San Antonio, Texas 78229

Dear Mr. Lambert:

I appreciate the time and thought put into your June 6, 1984, letter, as well as your confirmation that Lone Star will change its advertising to avoid the problems I have previously raised. I also apologize for the length of time taken to respond. Although I hope that there will be no need for continued lengthy correspondence, several points raised in your letter deserve a response.

The authority for my statement as to the meaning of "M16" consists of caselaw under the Lanham Act. The origin of a term for a product, or even a nickname, is not determinative of whether the term may be considered a trademark. What matters is whether the source of the product has adopted the term

and whether that term has become associated with a single source. Thus, that "M16" is a designation that came from the Army is not determinative; what is determinative is that Colt adopted and has advertised that designation, and that it has come to be associated with one source: Colt. You may also wish to know that the Final Judgment in the Springfield Armory litigation enjoins those defendants from "using the designation 'M16' other than to refer to rifles or parts made by Colt or pursuant to its licenses and made to Colt or U.S. Government specifications." A copy of the judgment is enclosed.

I also enclose, per your request, a copy of the U.S. Government's demilitarization manual. The Government is also prohibited by its license agreement with Colt, by which it obtained the ability to have "M16" parts made for it, from selling "M16" parts commercially. We appreciate your information that the Government has not always complied with its demilitarization regulations and license agreement and intend to pursue the problem with the Government. Nevertheless, whether or not there is a legal barrier to your buying Government surplus, you are still obliged not to mislead the public about the source or quality of the parts obtained -- *e.g.*, used or salvaged parts should not be advertised as though they were new. Note, in this respect, paragraph 2(h) of the enclosed Consent Judgment.

As to your comments about reverse engineering, you have greatly oversimplified the problem in stating that it can be done with a microcomputer, good measuring instruments, and a cheap computer program. The most sophisticated computer's product is no better than the information put in and the program used to evaluate it. Whatever information is placed into the computer from the standpoint of raw data such as tolerances and dimensions can only be made meaningful if properly oriented by the use of baselines, datums, basic dimensions, etc. Much of this, beyond a very rudimentary level, would entail a very sophisticated set of software that would have to be written specifically for this task, and would be nearly impossible without knowledge of currently used information from Colt drawings.

As to the ability you claim to be able to establish tolerances from measuring ten parts, all that measuring ten parts could possibly give you is a projected tolerance range of those parts, not the acceptable tolerance spread necessary for all such parts. You beg the question by speaking of "evaluating a sufficient number of representative parts." How would you know whether any specific ten parts you were measuring were representative? You would not in fact know whether any given parts were made consecutively yesterday or over a span of many years. Nor would you know whether one or more of the parts fell outside the tolerance band if, for example, they were accepted on waiver, or whether the dimensions and tolerance spread measured were acceptable to the mating sets of tolerances in another sub-assembly or assembly.

Consider, for example, a dimension that is produced by the size of the cutter used, such as the width of a slot. A new cutter is made to the maximum size possible to produce a slot width within tolerance. This new cutter cuts slots to the maximum width end of the tolerance spread and continues to make pieces in this area until the cutter becomes dull, after perhaps 500 pieces, depending upon conditions. The cutter is then reground to sharpen it. It now produces slot widths which all tend to be smaller than those produced with the new cutter. This process of regrinding continues until the cutter is producing slot widths at the minimum width end of the tolerance spread. After that point, it is discarded. It seems very unlikely to me that by measuring the slot width of ten pieces produced with, say, a new cutter you would deduce either the correct basic dimension or the correct tolerance.

Finally, I am not surprised that Mr. Christianson told you that the parts he sold were equal in quality to Colt-made parts, since the evidence is that he illegally bought them from a Colt supplier. We have been told that this activity has ceased.

I hope this letter will lay the issues to rest. If you have any

further questions, please feel free to write or even call.

Very truly yours,

/S/ Kim J. Landsman
Kim J. Landsman

kjl:cg
Enclosures

COLT INDUSTRIES Firearms Division
P.O. Box 1868
Hartford, Connecticut 06102
203/236-6311

January 26, 1983

Gentlemen:

Many of our suppliers of M16 rifle parts and components have written or telephoned us about inquiries or requests for quotations they have received from third parties seeking to purchase such parts and components. Most suppliers who have contacted us want to know how they should respond to these requests.

The intent of this letter is to state the facts concerning the rights and obligations connected with the manufacture, sale, and purchase of M16 parts and components.

To begin with, when we speak of requests from "third parties", we are referring to any individual, firm, corporation or other entity and any government or any agency of any government, other than Colt or the United States Government. Colt is the only company which has the right to purchase M16 parts and components from suppliers such as you, and the United States Government is the only government authorized, pursuant to a license agreement with Colt, to make such purchases, and even then, can purchase only for the United States Government's own use.

The M16 drawings and/or specifications, if any, which you have in your possession, if properly obtained by you, were obtained

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either from Colt or from the United States Government, and bear printed legends restricting their reproduction, disclosure or use to manufacture for the United States Government or Colt, and requiring their return when their authorized use is completed. Your contracts with Colt and/or the U.S. Government contain similar restrictions and obligations on your part.

In short, you must not use M16 drawings or specifications, nor any technical data or information obtained from or derived from such drawings or specifications, in the manufacture for or sale of M16 parts or components to any such third party. It follows, of course, that you are also not to sell to any such third party any "surplus", "over-runs", or other inventory of such parts or components resulting from a contract you may have had with Colt or the U.S. Government.

A few of the suppliers who have contacted us have advised that a prospective purchaser of such M16 parts or components has supplied or offered to supply drawings and/or specifications for the parts or components they seek to buy. It may be that the U.S. Government and/or Colt restrictive legends have been deleted from such documents. Under these circumstances, there exists one or more improprieties in the possession, use, or chain of possession or use, of such documents. No person, firm, corporation, foreign government or any other entity may properly purchase M16 parts and components from such documents, and neither you nor any of your competitors may affirmatively respond to a request to quote, manufacture or sell from such documents without being involved in such impropriety.

Any or all of the foregoing may be quoted by you in response to any of the requests covered by this letter.

We would appreciate your providing us with details of any and all such requests; we stand ready to answer further questions

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in this area and assist you in dealing with such matters.

Very truly yours,

/s/ Russell J. Bruneau
Russell J. Bruneau
Materials Manager

RJB/p

Defendant.

)
)
)
)
)
) Consolidated
) Civil Action Nos.
) 84-4056 and 83-4072

Attorneys for Plaintiffs

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For a patent it must be determined:

- (1) what was the best mode;
- (2) what specifications (trade secrets) are essential in:
 - (a) practicing each invention; and/or
 - (b) meeting the best mode requirement;
- (3) why each individual invention could not be:
 - (a) practiced; and/or
 - (b) the best mode requirement satisfied in the absence of such specifications;
- (4) further whether such specifications were in existence at the time the Colt patent applications were filed; and
- (5) finally whether such specifications were disclosed in the Patent.

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IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS ROCK ISLAND DIVISION

CHARLES R. CHRISTIANSON and)	
INTERNATIONAL TRADE)	
SERVICES, INC., a Massachusetts)	
corporation,)	
)	
<i>Plaintiffs,</i>)	
)	
vs.	)	Civil Action
	)	No. 84-4056
COLT INDUSTRIES OPERATING)	
CORP, a Delaware)	
corporation,)	
)	
<i>Defendant.</i>)	

CROSS-MOTION FOR SUMMARY JUDGMENT

Now comes the defendant Colt Industries Operating Corp ("Colt"), by its attorneys Anthony M. Radice, Joseph C. Markowitz, and Kim J. Landsman of the firm Parker Auspitz Neesemann & Delehanty P.C., John V. Patton and James T. Mowen of the firm Bozeman Neighbour Patton & Noe, and Robert L. Harmon of the firm William Brinks Olds Hofer & Gilson & Lione Ltd., and cross moves this Honorable Court for partial summary judgment (1) striking plaintiffs' affirmative defenses to Colt's counterclaims relating to an alleged failure to comply with the patent laws and holding that Colt's proprietary drawings for the "M16" rifle are valid and enforceable trade secrets, and (2) dismissing plaintiffs' proposed Count II of their complaint.

In support of said cross-motion, Colt shows the Court as follows:

Plaintiffs admit that they have used Colt's proprietary drawings, or known copies thereof, to order "M16" parts from Colt's

current and former suppliers of those parts, and that plaintiffs have sold such parts to Colt's former licensees and to other customers in the United States. Plaintiffs assert, however, that Colt may not enforce its trade secrets rights in these drawings for two types of reasons: (1) Colt's trade secrets should have been disclosed as a best mode for making the inventions set forth in patents owned by or assigned to Colt; and (2) the equitable defense of waiver, estoppel, and laches. Only the second type of defense should remain for trial.

Plaintiffs have not made the requisite evidentiary showing for their motion for summary judgment.* Nevertheless, assuming that all of the "undisputed facts" presented in Plaintiffs' Memorandum in Support [*sic.*] of Its Motion for Summary Judgment on the Unenforceability of the Alleged "M16" Trade Secrets at pages 22 through 43 were indeed evidentiary facts, plaintiffs' legal theory for contending that Colt's trade secrets are unenforceable is fundamentally unsound. Plaintiffs' legal position is without precedent and has been explicitly rejected in numerous cases.

Disclosure of the type of detailed production drawings that are at issue in this case is not required under 35 U.S.C. § 112. Neither interchangeability of parts, nor the particular dimensions and tolerances of Colt's "M16" parts, is *claimed* as an invention in any of the patents. It is the *claimed* invention that is the focus of all substantive inquiry in patent law, and so it is the claimed invention that must be adequately disclosed, in its best mode, to satisfy 35 U.S.C. § 112, not the manufacturing details of a commercial embodiment. It is undisputed that one skilled in the art can make and use the patented invention. Furthermore, the Supreme Court has explicitly rejected plaintiffs' preemption argument and held that patent law does not

* In particular, plaintiffs purport to show for each patent at the time of the application: (1) the inventor intended the invention to be used commercially on the "M16" rifle, (2) the inventor understood the need for interchangeable parts, (3) parts drawings for interchangeable parts existed and were known to the inventor; but the showing fails in many respects. See Point III of Defendant's Memorandum.

preempt state trade secret law or dictate state law remedies for violations of the patent law.

There is no doctrine from patent law or from equity that prevents state enforcement of trade secrets that should have been disclosed in the patent so that, even if plaintiffs were correct in their argument that the production drawings should have been disclosed pursuant to 35 U.S.C. § 112, the only remedy would be to invalidate the patent. Accordingly, Colt is entitled to summary judgment that there is no basis in patent law for not enforcing its trade secrets.

In addition to seeking summary judgment on their best mode argument, plaintiffs have moved to amend their complaint to add a second count for tortious interference with prospective business relationships with others, and have moved for summary judgment on that count. Their motion for summary judgment on that count is premised on the hope that this Court will hold that Colt has no enforceable trade secrets in the "M16" drawings. But regardless of how that issue is resolved, Colt as a matter of law has not tortiously interfered with plaintiffs' business relationships.

The facts presented by plaintiffs show no more than the issuance of cease and desist letters by Colt to its suppliers and to sellers of alleged "M16" parts. The cease and desist letters state facts and legal conclusions, answer inquiries from the relevant third-party, and assert claims held in good faith to patents and trade secrets relating to the "M16" rifle. These acts do not as a matter of law constitute tortious interference. The essential element of malice is nonexistent, and, since patents are presumed valid and neither the patents nor the trade secrets have ever been invalidated, Colt was entitled to enforce them by advising third parties of its rights and the bona fide assertion of claims.

For the foregoing reasons, as well as the reasons set forth in the accompanying memorandum of law, affidavits, and exhibits, Colt's cross motion for partial summary judgment striking plaintiffs' affirmative defenses relating to alleged deficiencies

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in Colt's patent disclosures and for partial summary judgment dismissing the proposed Count II of the complaint which claims tortious interference with prospective business relationships should be granted.

Dated this 12th day of November, 1984.

Colt Industries
Operating Corp.
defendant

by /s/ Kim J. Landsman
for PARKER AUSPITZ
NEESEMANN & DELEHANTY P.C.

Attorneys for Defendant

BOZEMAN, NEIGHBOUR, PATTON & NOE
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- and -

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- and -

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Chicago, Illinois 60611
(312) 822-9800

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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

CHARLES R. CHRISTIANSON, and)
INTERNATIONAL TRADE)
SERVICES, INC.,)
a Massachusetts Corporation,)

Plaintiff,

v.

COLT INDUSTRIES OPERATING)
CORP, a Delaware)
Corporation)

Defendant.

) Civil Action

) No. 84-4056

MEMORANDUM

**IN REPLY TO DEFENDANT'S OPPOSITION
TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO DEFENDANT'S
CROSS MOTION FOR SUMMARY JUDGMENT**

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Stuart R. Lefstein
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Rock Island, Illinois 61201

Attorneys for Plaintiffs

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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

CHARLES R. CHRISTIANSON and)	
INTERNATIONAL TRADE)	
SERVICES, INC., a Massachusetts)	
corporation,)	
)	
<i>Plaintiffs,</i>)	
	)	Consolidated
vs.	)	Civil Action
	)	Nos. 84-4056
	)	and 83-4072
COLT INDUSTRIES OPERATING)	
CORP, a Delaware corporation,)	
)	
<i>Defendant.</i>)	

**DEFENDANT'S MOTION FOR
A STAY PENDING APPEAL**

The defendant, Colt Industries Operating Corp, by its attorneys Anthony M. Radice, Joseph C. Markowitz and Kim J. Landsman of Parker Auspitz Neesemann & Delehanty P.C. and John V. Patton and James D. Mowen of Bozeman, Neighbour, Patton & Noe, moves this Honorable Court for an order, pursuant to Fed. R. Civ. P. 62(c) staying the injunctive and declaratory provisions of the Court's final judgment on liability, and staying all further proceedings in this case, pending Colt's appeal pursuant to 28 U.S.C. § 1292(a)(1) from that judgment.

In the event the Court's judgment does not contain any injunctive provisions, Colt moves for certification pursuant to 28 U.S.C. § 1292(b) of the following controlling questions of law for immediate appeal:

(1) whether 35 U.S.C. § 112 requires the disclosure of specific dimensions and tolerances of parts of Colt's "M16" rifle in any of Colt's patent applications;

(2) whether it is appropriate to order the unenforceability and/or disgorgement of Colt's trade secrets as a remedy for a § 112 violation; and

(3) whether the § 112 violation found in this case, in combination with Colt's maintenance of the matters not disclosed as trade secrets, suffice to support a finding that Colt violated the antitrust laws.

Colt moves for a stay pending appeal, and for certification of the above-listed questions if the Court's judgment does not contain an injunction, on the following grounds:

1. Absent a stay pending appeal, Colt will suffer irreparable injury. Plaintiffs' proposed final judgment on liability would declare that "all trade secrets in technical information relating to the M-16" are no longer enforceable, would restrain Colt from enforcing its trade secrets, would mandate disgorgement of Colt's trade secrets at least to the plaintiffs, and would require Colt to remove the proprietary legends from its engineering drawings. Should some or all of these provisions take immediate effect, Colt will very likely have no trade secrets to protect even if it is successful on appeal.

2. The Court's decision is based on novel and difficult questions of law. Therefore, the status quo should be maintained pending the appeal to allow these difficult and controlling questions to receive due consideration by the Court of Appeals.

3. A brief stay pending appeal will cause the plaintiffs no hardship. The plaintiffs are not prevented from carrying on their business during the pendency of the appeal. Their complaint seeks only damages and to enjoin Colt from interfering in their business in the future. If Colt is unsuccessful on appeal, these remedies will still be available.

4. Further proceedings in this case should be stayed pending appeal so as to conserve the parties' and the Court's resources. The decision by the Court of Appeals could well affect plaintiffs' entitlement to damages, thereby making a trial on damages unnecessary, or limiting the trial's scope.

5. If the Court's judgment is not to contain any injunctive provisions, Colt requests certification of the questions listed above pursuant to 28 U.S.C. § 1292(b). These questions controlled the Court's decision on liability.

They involve novel and difficult areas of the law as to which there is substantial ground for difference of opinion. An immediate appeal from the Court's judgment will advance this litigation because it will enable the parties to obtain a definitive ruling on these difficult issues prior to expending time, effort and expense in further pre-trial proceedings and in a trial on damages.

6. In the event the Court decides to deny this motion for a stay pending appeal, Colt requests a stay of 20 days to permit an application for a stay to be made to the Court of Appeals pursuant to Fed. R. App. P. 8(a).

7. For the foregoing reasons, and for the reasons set forth in defendant's accompanying memorandum of law and the affidavit of Ronald Stilwell, defendant requests a stay pursuant to Rule 62(c) of the Federal Rules of Civil Procedure of the injunctive and declaratory provisions of the Court's final judgment pending Colt's appeal from that judgment. If the final judgment is not to contain any injunctive provisions, defendant requests certification of the judgment pursuant to 28 U.S.C. § 1292(b).

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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION**

CHARLES R. CHRISTIANSON and)	
INTERNATIONAL TRADE	)	Consolidated
SERVICES, INC., a Massachusetts	)	Civil Actions
corporation,	)	Nos. 84-4056 and
	)	83-4072
<i>Plaintiffs,</i>)	
)	
vs.	)	AFFIDAVIT
	)	OF RONALD
	)	E. STILWELL
COLT INDUSTRIES OPERATING)	
CORP, a Delaware)	
corporation,)	
)	
<i>Defendant.</i>)	
STATE OF CONNECTICUT)	
	:	ss.:
COUNTY OF HARTFORD)	

Ronald E. Stilwell, being duly sworn, deposes and says:

1. I am Vice President of Colt Industries Operating Corp, Firearms Division. I make this affidavit in support of Colt's motion for a stay pending appeal.

2. I have reviewed plaintiffs' proposed final judgment on liability submitted pursuant to the Court's decision and order entered May 24, 1985. If any of the declaratory or injunctive provisions of plaintiffs' proposed final judgment were to take immediate effect, Colt would suffer a catastrophic and probably irretrievable loss of its secret technical data used in the manufacture of "M16" rifles.

Colt's Trade Secrets

3. Colt's trade secrets relating to the "M16" rifle are the

product of years of continuous engineering refinements. Colt's engineers have performed numerous tolerance studies to ensure that all parts of the "M16" rifle function properly, and, based on those studies, set the dimensions and tolerance extremes for each part. Colt's engineers have chosen materials for each part that meet the specified design criteria, and have selected processes (such as heat and chemical treatment, milling, forging, stamping, molding) to minimize any changes in dimensional characteristics that may occur during use. Colt has also designed specialized tooling for manufacturing the parts.

4. The results of all this work are contained in hundreds of thousands of pages of detailed engineering drawings, specification sheets, studies, and tests.¹ This material has been continually revised as changes are adopted for various parts (*e.g.*, the buttstock of the "M16A2" is made of a different material than that of the "M16A1," the barrel is heavier, and the hand-guard is round instead of triangular). Experience with the product has led to further refinement and improvements. While parts manufactured today are still interchangeable with those made for "M16" rifles twenty years ago, the specifications for today's parts have in many, many cases undergone refinements. The drawings used today are thus not the same as those originally developed by Colt. These drawings and other technical data represent Colt's huge investment in the "M16" rifle.

5. Colt maintains the secrecy of this material by a variety of measures. Colt places proprietary legends on its drawings stating that all information therein is owned by Colt, and shall not be disclosed to third parties. Colt's contracts with its

¹ The extent of these files can be measured by the document production in the *Springfield* litigation, with which this case was consolidated. In response to the Springfield defendants' demand for production of all trade secrets pertaining to the "M16" rifle, Colt produced approximately 500 boxes and file drawers of documents.

licensees and suppliers permit them to use Colt's drawings only within the scope of their contracts, and prohibit them from disclosing this information to third parties. Colt forbids its employees, even after their employment ends, from using or disclosing any of the confidential information to which they had access while in Colt's employ. In the absence of such measures, the value of Colt's extensive engineering work would be lost.

Colt Would Be Irreparably Injured Without A Stay Pending Appeal

6. Plaintiffs' proposed final judgment would deprive Colt of these protections and enforcement mechanisms, and would appear to put all of Colt's drawings and other data relating to "M16" rifle development into the public domain. Paragraphs 8 and 9 of the proposed judgment appear to require Colt to remove the legends and restrictions that are its means of protecting against dissemination of the drawings and technical data being used by Colt's suppliers and licensees. Paragraph 7 would seem to give plaintiffs access to any of Colt's trade secrets not already in their possession. Paragraph 6 enjoins Colt in general terms from seeking to enforce its trade secrets or from otherwise interfering with plaintiffs' business, and would thus appear to give the plaintiffs the freedom to disseminate Colt's technical data.

7. The result would be that much if not all of this material would become public in a very short period of time; the tremendous investment Colt has made developing this material would be lost; and Colt's right to appeal would be rendered meaningless. Once Colt's trade secrets are no longer secret, Colt would, as a practical matter, lose much of the benefits of its vast engineering data, even if the Court of Appeals subsequently decides that some or all of this material may still be maintained as a trade secret.

8. Colt is involved in continuous dealings with hundreds of suppliers of "M16" rifle parts. These suppliers have in their possession copies of the same product drawings and other technical data at issue. The task of removing proprietary leg-

ends alone would be enormous, involving the physical mutilation of many thousands of pages of documents, located at many different facilities. More importantly, once the legends and restrictions are removed, it would be virtually impossible to replace them, should Colt prevail in whole or in part on appeal. Colt should not be required to assume these obligations before the Court of Appeals has had the opportunity to consider whether Colt retains any measure of protection for its trade secrets. Nor should Colt's suppliers be encouraged, during the pendency of the appeal, to use or disclose this information to or for the benefit of third parties.

9. Colt is engaged in attempts to prevent its former licensees, the governments of Singapore, Philippines and Korea, from using or disseminating engineering drawings and other technical data whose secrecy each of those licensees contractually agreed to maintain. If the Court's ruling is not stayed, Colt may be unable to prevent its licensees from destroying the confidentiality of those materials. Colt's current licensees, the governments of the United States and of Canada, are under similar obligations. Their release of Colt's trade secrets would pose the same threat.

10. For these reasons, as well as for the reasons stated in the accompanying memorandum of law, we ask that the Court stay its final judgment on liability pending Colt's appeal from that final judgment, by reason of the irreparable and irretrievable harm Colt would suffer should the judgment take immediate effect.

/S/ Ronald E. Stilwell
Ronald E. Stilwell

Sworn to before me this
/S/ 3rd day of July, 1985

[signature unknown]

Notary Public

My Commission Expires /S/ 4-1-87

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS**

CHARLES R. CHRISTIANSON and	)	FILED
INTERNATIONAL TRADE	)	JUL 19 1985
SERVICES, INC., a Massachusetts	)	JOHN M. WATERS,
corporation,	)	Clerk
	)	U. S. DISTRICT
	)	COURT
<i>Plaintiffs,</i>	)	CENTRAL
	)	DISTRICT
v.	)	OF ILLINOIS
)	
	)	Consolidated
	)	Civil Action
	)	Nos. No. 84-4056
COLT INDUSTRIES OPERATING	)	and 83-4072
CORP., a Delaware)	
corporation,)	
)	
<i>Defendant.</i>)	

ORDER FOR A STAY PENDING APPEAL

The matter coming before the court pursuant to defendant's motion for a stay pending appeal, and the court being advised, and the court having found that Colt could be irreparably injured without a stay, that Colt has raised serious questions on the merits for appellate review, and that the plaintiffs will not be appreciably harmed by a stay; the court hereby allows said motion, and

ORDERS that the court's final judgment on liability, entered on July 19, 1985, and all further proceedings in this action, be stayed pursuant to Fed. R. Civ. P. 62(c) pending the outcome of Colt's appeal from that judgment.

In the event that the defendant fails to take an appeal from the court's final judgment on liability, or fails diligently to

prosecute said appeal, plaintiffs may apply to the court for relief from this order.

/S/ Robert D. Morgan
Robert D. Morgan
United States District Judge

Entered: /S/ July 19, 1985

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

85 - 2644

CHARLES R. CHRISTIANSON	)	Appeal from United
and INTERNATIONAL	)	States District Court
TRADE SERVICES, INC.,	)	for the Central
	)	District of
<i>Appellees,</i>	)	Illinois, Rock
	)	Island Division
v.)	
	)	No. 84-4056
COLT INDUSTRIES OPERATING)	
CORP.,	)	Hon. Robert D. Morgan
<i>Appellant.</i>	)	District Judge

MOTION FOR AN EXPEDITED HEARING

Appellant Colt Industries Operating Corp ("Colt") moves for an expedited hearing on this appeal. The reasons for this request are as follows:

1. Colt is filing its opening brief nearly a month early. Colt's brief is not due until October 4, 1985, but is being served on September 6, 1985 so that it can be filed on September 9, 1985. Colt requests that appellees' time to submit their brief in opposition be similarly limited, to thirty days instead of forty, making their brief due on October 9, 1985, and Colt's reply brief due on October 23, 1985. Colt further requests that the case be scheduled for argument in November if possible.

2. Although appellees have opposed Colt's suggestion that the time for serving their own brief be shortened, they agree that an early date for a hearing of this appeal would be desirable. In their reply brief in support of their motion to transfer, appellees contend that Colt's alleged "monopolistic and preda-

tory practices" have a "devastating effect" on them, and that they therefore "also desire an earlier date for hearing." (p. 11) Similarly, the decision below, even though stayed on appeal, has potentially devastating consequences for Colt. The decision invalidates nine Colt patents and orders the disgorgement of all Colt's trade secrets related to the "M16" rifle. In reliance on the district court's interlocutory decision, Colt's suppliers, licensees or competitors may act during the pendency of this appeal so as to further threaten Colt's trade secret rights.

3. In addition, there are two pending cases between Colt and its foreign licensees whose outcomes may be affected by the district court's decision or by this appeal. Thus, the only way Colt can be assured of the continued ability to protect its trade secret rights, assuming this Court upholds those rights, is through the prompt prosecution of this appeal.

4. Certainly, nothing in the appellees' most recent brief in support of their motion for a transfer suggests any reasons for delay. Even if this Court were to decide that the appeal should be heard by the Seventh Circuit, the appeal should still be briefed expeditiously. That conclusion is not likely, however, since appellees concede in their most recent brief that "the § 112 issue . . . is the focus of this case." (Reply brief, p. 2.) Appellees implicitly concede that the district court could not have found trade secret invalidity or antitrust liability without first finding that Colt's patent disclosures were inadequate under 35 U.S.C. § 112. Since all of plaintiffs' claims were directly based on a claim arising under the patent laws, and since the § 112 issue is the heart of this appeal as well, appellees' motion to transfer should not detain this Court. This appeal should be heard in this Court and it should be heard expeditiously.

For the foregoing reasons, Colt requests that appellees' time to submit their brief in opposition be shortened from forty days to thirty days and that the case be set down for argument, if possible, in November 1985.

Dated: New York, New York
September 6, 1985

JA-104

Respectfully submitted,

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JA-105

Docket No. 86-1145

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

CHARLES R. CHRISTIANSON	)	Appeal from United
and INTERNATIONAL	)	States District Court
TRADE SERVICES, INC.,	)	for the Central
	)	District of Illinois,
<i>Plaintiffs-Appellees,</i>	)	Rock Island Division
)	
v.)	
	)	No. 84-4056
COLT INDUSTRIES OPERATING)	
CORP,	)	Hon. Robert D. Morgan
<i>Defendant-Appellant.</i>	)	District Judge

MOTION TO EXPEDITE THE HEARING

Defendant-Appellant Colt Industries Operating Corp ("Colt") moves to expedite the hearing of this appeal, and requests that the argument of the appeal be scheduled two weeks after its reply brief is filed or in any event before the end of the current term. The grounds for the motion are set forth in the annexed affidavit of Anthony M. Radice.

Dated: New York, New York
February 19, 1986

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Docket No. 86-1145

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

CHARLES R. CHRISTIANSON)	Appeal from United
and INTERNATIONAL TRADE	)	States District Court
SERVICES, INC.,	)	for the Central
<i>Plaintiffs-Appellees,</i>	)	District of Illinois,
	)	Rock Island Division
v.)	
	)	No. 84-4056
COLT INDUSTRIES)	
OPERATING CORP.,	)	Hon. Robert D. Morgan
<i>Defendant-Appellant.</i>	)	District Judge

AFFIDAVIT

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Anthony M. Radice, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and of Parker Auspitz Neesemann & Delehanty P.C., attorneys for defendant-appellant Colt Industries Operating Corp ("Colt"). I make this affidavit in support of Colt's motion for an expedited hearing of this appeal.

2. This appeal was filed on August 5, 1985 in the Court of Appeals for the Federal Circuit, where, despite Colt's efforts at expedition, its progress was delayed by approximately four months by that Court's consideration of appellees' motion to transfer for lack of jurisdiction. Colt attempted to expedite the appeal by filing its main brief nearly a month early, on September 9, 1985, and by requesting an expedited schedule. But the Federal Circuit stayed the briefing schedule and then, on December 4, 1985 in an unpublished order it determined that it did not have jurisdiction and transferred the appeal to this

Circuit pursuant to 28 U.S.C. § 1631.¹ The file was finally transmitted from the Federal Circuit on January 24, 1986, and was docketed in the Seventh Circuit on January 30, 1986.

3. Because of the extent and complexity of the patent, antitrust and other issues raised by this appeal, we do not seek to shrink the time for filing the remaining briefs, but only to schedule the argument promptly thereafter. Since Colt filed its main brief last September in the Federal Circuit and only a slightly revised version of that brief in this Circuit on February 6, 1986, appellees should have little difficulty in adhering to the briefing schedule of F.R.A.P Rule 31. Even assuming some modest extensions of time in the filing of appellees' brief or Colt's reply brief, the appeal should still be fully briefed in late March or early April, and ready for argument well before the end of this term.

4. Although the judgment below has been stayed pending this appeal, the published decision alone has potentially devastating consequences for the subject matter of this action, Colt's trade secrets, while this appeal is pending. The district court held nine Colt patents invalid, held unenforceable and ordered disgorged all Colt's trade secrets related to the "M16" rifle, and held Colt's attempts to enforce these rights violative of the antitrust laws. Upon a showing of the disastrous consequences of the district court's injunction, particularly the trade secret disgorgement requirements, Colt obtained a stay pending appeal.²

¹ An appeal transferred pursuant to that statute "shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred." *Id.* Thus, apart from the reasons for expedition set forth herein, for purposes of scheduling the argument, this appeal should proceed as if it had been docketed in the Seventh Circuit on August 5, 1985.

² That showing is set forth in Colt's motion for a stay, supported by the affidavit of Ronald Stillwell. (A-189-202).

5. Even with the protection of a stay, however, Colt may be severely prejudiced during this appeal. In reliance on the district court's interlocutory decision, Colt's present and former suppliers and licensees may act during the pendency of this appeal so as to further threaten Colt's trade secret rights. Pursuant to their respective licenses and contracts with Colt, these entities are in possession of Colt trade secret drawings for "M16" parts, but may no longer observe the contractual restrictions on use and protection of the trade secrets in light of the district court's conclusions. Any such use or dissemination of the trade secrets could destroy their value to Colt and their status as trade secrets.

6. Moreover, the legal requirement and business necessity vigorously to enforce one's trade secrets places Colt on the horns of a dilemma during this appeal. On the one hand, Colt may lose its trade secrets through inaction. On the other hand, under the logic of the district court's decision, attempts to enforce the trade secrets may subject Colt to antitrust liability. This dilemma should not be permitted to last any longer than necessary.

7. Finally, I have been advised that one of Colt's licensees, the U.S. Government, has already used the district court's decision to the prejudice of Colt in negotiations concerning "M16" rifle procurement. In future procurement, the Government has reduced the royalties it would otherwise recognize and pay and, unless Colt obtains a prompt reversal of the decision below, the loss of royalties may not be recoverable.

8. We have advised appellees' attorneys of our intention to request an expedited hearing, and they have no objection to having argument scheduled before the end of this term, so long as argument is scheduled no sooner than two weeks after appellant's reply brief is filed.

9. Wherefore, for the foregoing reasons, Colt requests that argument of this appeal be scheduled as soon as possible two

weeks after our reply brief is filed, or in any event before the end of this term.

/s/ Anthony M. Radice
Anthony M. Radice

Sworn to before me this
/s/ 19th day of February, 1986.

/s/ Heather S. Thomas
Notary Public

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604**

February 24, 1986.

By The Court:

CHARLES R. CHRISTIANSON,)	
and INTERNATIONAL TRADE)	
SERVICES, INC.,	)	Appeal from the United
a Massachusetts	)	States District Court for
corporation,	)	the Central District of
<i>Plaintiffs-Appellees,</i>	)	Illinois, Rock Island
	)	Division
No. 86-1145 v.)	
	)	No. 84-C-4056,
COLT INDUSTRIES	)	Hon. Robert D. Morgan,
OPERATING CORPORATION,	)	<i>Judge.</i>
<i>Defendant-Appellant.</i>)	

ORDER

On consideration of the "MOTION TO EXPEDITE THE HEARING" filed by defendant-appellant on February 20, 1986,

IT IS ORDERED that the motion is GRANTED to the extent that oral argument will be heard before the court recesses in June.

In addition, IT IS ORDERED that the briefing schedule set by the court's order of February 13, 1986 is vacated since appellant has elected to file a new brief rather than relying on the brief it filed in the Federal Circuit. The new briefing schedule is as follows:

1. Plaintiffs-appellees shall file their brief on or before March 17, 1986.
2. Defendant-appellant's reply brief, if any, shall be filed on or before March 31, 1986.

In light of the amount of time this appeal has been pending, no extensions of time will be granted.

Note: This Order will not be published in a printed volume because it does not add significantly to the body of law and is not of widespread legal interest. It is a public record. It is not citable as precedent.

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CHARLES R. CHRISTIANSON)	
and INTERNATIONAL TRADE)	
SERVICES, INC., Etc.,)	
<i>Appellee</i>)	
)	
v.	)	Appeal No. 85-2644
)	
COLT INDUSTRIES)	
OPERATING COPR.,)	
<i>Appellant</i>)	

ORDER

On consideration of appellant's motion for an expedited oral argument,

IT IS ORDERED that this appeal is set for hearing at the session which begins at 10:00 a.m. on Monday, October 6, 1986, in Courtroom No. 2 on the fourth floor of the National Courts Building, 717 Madison Place, N.W., Washington, D.C. 20439. The court has allotted 15 minutes for each party for that purpose.

IT IS FURTHER ORDERED that twelve copies of any brief or appendix previously filed in this court or in the U.S.C.A. Seventh Circuit shall be filed on or before September 26, 1986. Counsel may refile any other pertinent materials in the form of a supplemental joint appendix on that same date.

FOR THE COURT

/S/ 9/12/86

/S/ Francis X. Gindhart

cc: Anthony M. Radice, Esq. /S/ Clerk
John C. McNett, Esq.

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

85-2644

CHARLES R. CHRISTIANSON	)	Appeal from United
and INTERNATIONAL TRADE	)	States District Court
SERVICES, INC.,	)	for the Central District
<i>Appellees,</i>	)	of Illinois, Rock Island
	)	Division
)	
v.	)	No. 84-4056
)	
COLT INDUSTRIES OPERATING	)	Hon. Robert D. Morgan
CORP.,	)	District Judge
<i>Appellant.</i>)	

MOTION TO DISMISS

Appellees move to dismiss this action based upon their earlier filed "Appellees' Motion to Transfer to the Court of Appeals for the Seventh Circuit" and "Appellees' Reply to Appellant's Opposition to Appellees' Motion to Transfer"¹ (both hereby incorporated by reference), as well as:

1. This Court entered a Judgment and Mandate to transfer this case to the Seventh Circuit, with accompanying opinion that no basis for jurisdiction could be discerned. That judgment could be considered *res judicata*, was not appealed, and should be adhered to. Because the Seventh Circuit has refused jurisdiction in response to false and misleading representations of Colt to manipulate jurisdiction (see ¶3 and ¶4, *infra*) this case should be dismissed rather than transferred back again to the Seventh Circuit. This Court has the power to dismiss, rather than transfer. See *Bray v. United States*, 785 F.2d 989 (Fed.

¹ See Order Granting Leave to File Brief, Sept. 24, 1985.

Cir. 1986) and *Little River Lumber Co. v. United States*, 7 Cl. Ct. 492 (1985).

2. Contrary to the suggestion by the Seventh Circuit in its jurisdiction opinion, the relief requested in appellees' antitrust complaint can be obtained without reaching the question of federal preemption; thus the well-pleaded complaint rule precludes a finding of Federal Circuit jurisdiction. See *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1 at 26; 103 S. Ct. 2841 (1983).

3. Colt's 7th Cir. brief falsely states that "the complaint . . . depends entirely on the claim that Colt's patents are invalid under 35 U.S.C. § 112." (p. 4) The Seventh Circuit (presumably misled by Colt's false statements) incorrectly stated (p. 21):

. . . the abuse by the defendant of the patent and trade-secrets law was the *only* basis Christianson asserted in the complaint for the alleged antitrust violation, and the only ground asserted for invalidity of the trade secrets was the withholding of information in contravention of § 112.

However, Colt knew full well that this was not true and had earlier admitted in its Cross-Motion for Summary Judgment:

"Plaintiffs assert, however, that Colt may not enforce its trade secret rights in these drawings for *two* types of reasons: (1) [§112 preemption issue] and (2) *the equitable defense of waiver, estoppel and laches*. [permission issue] *Only the second type of defense should remain for trial.*" (Emphasis added.)

Further inconsistent with Colt's above admission, was Colt's false claim in its jurisdictional brief (p. 13) that the complaint alleged that the patents "were invalid . . . in contravention of . . . §112)." In so doing Colt distorted the language of paragraph 18 since it omitted the introductory words, "Unless such patents were invalid" The actual meaning of paragraph 18, however, was that because the patents had expired, anyone could use them.

4. The Seventh Circuit's statement (pp. 20-21) that the complaint carried an "implication" of a §112 violation because the necessary information "was not available" has no validity because the technology obviously was available to the plaintiffs who had been using it for eight years before Colt put them out of business.

5. In fact, invalidating Colt patents, its alleged trade secrets, or seeking a construction of §112, was not even one of plaintiffs' theories for recovery, let alone its "only" theory. The complaint sought recovery because Colt put plaintiffs out of business by organizing a group boycott, a classic antitrust violation. See ¶21 and ¶22 of Complaint (A-39 — A-47) and cases cited in Brief of Appellees (on merits), p. 46-48. Additionally, either as an independent ground for recovery, or as an aggravation of the antitrust violations, the complaint alleges that Colt unilaterally, revoked its permission previously granted to plaintiffs to deal in M-16 parts. See ¶¶20, 21 & 22 of Complaint. Also see A-1463, A-1464, A-1478 and Brief for Appellees (on merits), p. 47, note 3. The issue of trade secret invalidity under §112 arose only after Colt pleaded its alleged trade secrets as a defense to the antitrust violations (¶114 of Reply to Counterclaims)

6. Moreover, the patent-related issues in this case are solely related to federal preemption of state law. In the absence of a patent infringement claim, the appeal of a state action and its associated preemption issue should be resolved in the regional circuit. *Cable Electric Products, Inc. v. Genmark, Inc.* 770 F.2d 1015, 226 U.S.P.Q. 881 (Fed Cir. 1985). See discussion of "conflict preemption" in *Federal Preemption, Removal Jurisdiction, and the Well-Pleaded Complaint Rule*, 51 U. Chi. L. Rev. 634, at 665. In the antitrust case of *American Cyanamid Co. v. Power Conversion, Inc.*, 175 USPQ 302, companion opinion at 336 N.Y.S. 2d 6, 71 Misc. 2d 213, 175 USPQ 303 (New York Supreme Court, Westchester County 1971, 1972), the *state* court held it had the power to determine validity of a patent (175 USPQ at 303), and dealt with the issue of conflict of trade secret and patent laws involving §112 (175

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USPQ at 305-6). Federal Circuit jurisdiction of this case would inappropriately expand §1338 jurisdiction and deprive state courts of jurisdiction which they have historically exercised.

Respectfully submitted,

By /s/ John C. McNett

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